THE TECHNICAL INDIVIDUALISATION OF ACTUARIAL YOUTH JUSTICE

A thesis submitted to the Faculty of Law, University of Technology Sydney

By

Craig Osmond

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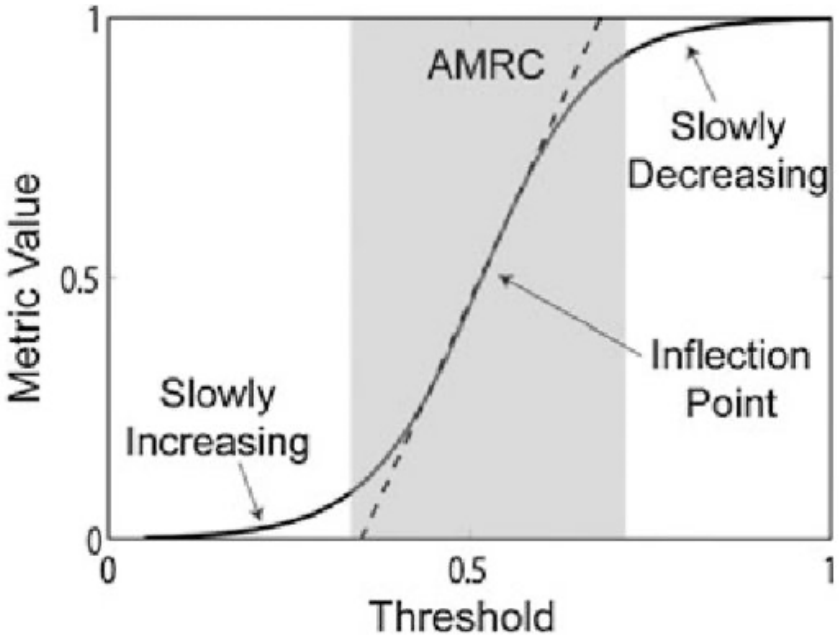
Thesis Supervisors:

Professor Thalia Anthony

Professor Tracey Booth



Sigmoid Curve

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"The problem of human progress cannot be posed unless one takes into account the entire system of activity and existence constituted by what man [sic] *produces* and what man [sic] *is*. Consideration of what man [sic] produces (language, technics) does not permit evaluation of human progress, nor prediction of its law of development as a function of time, because attention is then solely directed towards the objective concretization of human activity. For this reason, as long as one considers only objective concretization, one has no criterion to enable one to distinguish between one system of concretization and another as the sole sign and valid medium of human progress […]. If technology becomes industry and takes defensive refuge in a new feudalism of technicians, researchers, and administrators, it will evolve like language and religion towards closure, centering on itself instead of continuing to form, with man [sic], an ensemble in process of becoming." (Simondon, 2010: 230-232)

Certificate of original authorship

I, Craig Osmond, declare that this thesis is submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law at the University of Technology Sydney.

This thesis is wholly my own work unless otherwise referenced or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

This document has not been submitted for qualifications at any other academic institution.

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Dedication

This thesis is dedicated to all children and young people who experience the pains of rehabilitation under the operational structure of the Youth Level of Service/Case Management Inventory.

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ABSTRACT

This research adopts a 'philosophy of technology' approach to critically evaluate the actuarial risk management instrument used in Youth Justice, New South Wales in Australia. Specifically, it analyses the function, capacity, and limitations of the Youth Level of Service/Case Management Inventory (YLS/CMI) in managing young people. The case study methodology of this analysis follows the introduction of this actuarial risk assessment instrument since its inception in 2002 up until 2022. It seeks to grasp how this instrument regulates the case management of young people sentenced in the Children's Court and how its usage has impacted on youth diversion programs.

The research contributes to a growing body of critical scholarship that seeks to make sense of the way in which predictive and other forms of automated technology mediate the practices of criminal justice authorities (Phillips, 2017: 212). The primary lens used in the analysis is drawn from Gilbert Simondon's (2017) philosophy of technology. Simondon provides a way of making sense of a technical object's internal functional technical schema and the regulatory values and norms this schema establishes in its intended operational milieu. He has demonstrated that specific kinds of technical object are provisional entities, subject to an ongoing process of technical individualisation to improve their regime of functioning.

The YLS/CMI's anticipatory data structure deploys a regime of technical individualisation that establishes a reciprocity between the risk assessment and the case management of young people. It operates in an open-ended way that can adjust its regulatory controls to changes in risk trajectories. The YLS/CMI establishes a single-minded security logic that prioritises community safety as its core value and limits rehabilitative efforts to the targeting of criminogenic needs. My analysis demonstrates that this regime has imposed intense controls on vulnerable segments of the youth population, maintaining their involvement in the criminal justice system. This thesis points to the amplification and normalisation of the YLS/CMI across the operational domains of Youth Justice NSW, through its ongoing technical individualisation. This has curtailed significant modifications in the instrument's mode of functioning that could incorporate a different set of values and norms to engage with young people.

INTRODUCTION: THE TECHNOLOGY OF ACTUARIAL RISK ASSESSMENT AND CASE MANAGEMENT IN YOUTH JUSTICE

Our relationship to the world is, to a substantial level, mediated by technical apparatuses that are networked by means of the internet. The way we research, work, shop, invest, maintain our friendships, find potential partners, recreate, or spy means that our daily movements are constantly being tracked. Consequently "more and more human activity is coded into this network" (Viana, 2015: 34). While many of us take the ubiquity of technology for granted, and perhaps even have developed a compulsive reliance upon technologies, critical criminological and legal scholarship has predominantly had an uneasy relationship with the proliferating use of technology in the criminal justice system. The ubiquitous use of technologies of prediction in risk assessment and offender management, networked digital apparatuses of surveillance, (semi-)automated systems of risk assessment in bail and sentencing decision-making, predictive policing apparatuses, and the deployment of big data using machine learning technologies and infrastructures to learn about criminal justice processes have altered the processes of criminal justice and the way in which decisions are made in relation to the punishment and rehabilitation of offenders and in how knowledge is produced. Data about people's activities is coded into computer language or the technology's anticipatory codes whereby the "flux of real life events" is translated and operationalised in a different way (Hildebrandt, 2013: 229). This generates alternative outcomes than would otherwise occur if humans maintained exclusive control over these operations.

The mediation of criminal justice processes by technical means has multiplied across many of its operational domains and these are increasingly becoming networked in relation to one another. The co-relation or co-individuation that occurs in the mediation between a specific technical apparatus or technical object and human actors in the criminal justice system remains an important domain for critical scholarship. The technological management of criminal justice processes, as well as of collective life outside of the criminal justice system, is now predominantly framed by a pre-emptive mentality and mode of operation which has radically altered the regulatory practices within the criminal justice system and wider society (Brownsword, 2019: 4). Technological regulation has a mode of existence that can function outside the rule of law and its norms of conduct, as well as being able to restructure or subvert these norms.

The general object of my inquiry is actuarial risk assessment instruments which have been used in corrections since the 1930s (Burgess, 1936) and are now ubiquitous in many criminal justice jurisdictions across the world (Harcourt, 2007). My research adopts a case study approach that

aims to critically evaluate the regime of functioning of actuarial risk case management in Youth Justice, New South Wales in Australia. The Youth Level of Service/Case Management Inventory – Australian Adaptation (YLS/CMI-AA) was introduced in 2002 into this local jurisdiction and continues to be used in the risk case management of young people on remand and those sentenced to community-based orders and youth detention. Over time it has also assumed a more prominent role in preventive measures that have been installed into the state's youth diversion programs.

My research is situated at the intersection of two bodies of critical scholarship: accounts of actuarial justice in the field of punishment and society, and critical engagement with technology, crime, and the law. While scholarship about actuarial justice often refers to prediction instruments like the YLS/CMI as a technology of punishment, there has been limited attention paid to the concrete technical operations that mediate the calculations, decisions, and practices of penal authorities (Brown, 2006; Phillips, 2017; Hayward and Mass, 2020). Technical objects have an agency and identity that renders them relatively autonomous because of their interactions that are established with the "associated milieus" in which they operate (Blom, 2016: 20). The co-relation of technology and humans in the management of future crimes is little understood and even less theorised, especially in relation to digital frontier technologies (Milivojevic, 2021: 17). Actuarial justice has also featured in scholarship in the technology crime and law field because of its capacity to automate systems of criminal justice that are geared to the anticipation and prevention of crime. There is now a growing body of research and theoretical work that is trying to come to grips with the technological properties of politico-collective relations in crime, criminal justice, and the law.

The reference to a technical object's relation with its associated milieu is linked to Simondon's (2017) philosophical work on the modes of existence of technical objects. Simondon (2017: 227) has shown how a technical object "is invented according to the milieu in which it must be integrated". His account draws attention to the schema of operations concretised in a technical object that provide a way of grasping how the object's internal operating domains and their distributed functions establish a recurrent causality across these operational domains that modulates relations in its associated milieu. Not only does his processual thinking about a technical object's internal schema of functioning help to make sense of its emergent operational individuality, but it also seeks to account for how its regime of functioning is transformed over time (2017: 26). Technical objects tend toward "an increasing, yet always relative and limited autonomy, which is manifest in [their] internal coherence or auto-correlation of [their] elements" (Voss, 2019: 6). This tendency is described by Simondon (2017: 38) as an ongoing process of concretisation that situates the technical object within a genetic lineage where, at critical thresholds, new relations and functions are concretised in the technical object and its

relations with its associated milieu. This is the result of informational forces which come from the associated milieu that are mediated by humans to resolve internal conflicts in the internal operations of the technical object and tensions in its relations with its associated milieu. Technical objects possess degrees of open-endedness as they harbour a margin of indeterminacy in their operations.

My research draws on Simondon's philosophy of the technical individualisation of technical objects to make sense of the YLS/CMI's mode of existence in Youth Justice and to critically evaluate the results of its regime of functioning. By advancing a novel conceptual framework, the research provides a unique contribution that can be applied to critical analyses of technology in the fields of sociology of punishment and technology, crime, and the law. This conceptual framework is used as the primary interpretative lens to conduct an extensive archival and documentary analysis. The research spans the genesis of a technical lineage of risk assessment instruments associated with the developmental work of Burgess and his colleagues that created an evolving series of risk prediction instruments that coupled rehabilitative and risk prevention functions in adult parole in Illinois in the 1930s through to the introduction of the YLS/CMI in Youth Justice NSW in 2002 up until 2022. The analysis focuses on the technical operations that have brought technical objects such as the YLS/CMI into being, that legitimate its regime of functioning, and that modify its operations over time as well as the concrete ways in which the YLS/CMI mediates relations in the collective Youth Justice milieu. In addition, this archive is used to conduct a critical discourse analysis of youth justice policy and practice and its impact on children and young people. The research aims and research methodology are outlined in section 03.1.1 towards the end of this introduction.

0.1 ACTUARIAL RISK MANAGEMENT AS A MODE OF ACTUARIAL JUSTICE

Actuarial risk assessment and risk case management is one of the ways in which actuarial justice operates within the criminal justice system. "Actuarial justice" was coined by Feeley and Simon (1994: 173) to characterise "a paradigm shift" that they claimed was then shaping the penal field in the US and the "agenda of criminology". Actuarial justice or the "new penology" was described as follows:

> It is concerned with the techniques for identifying, classifying and managing groups assorted by levels of dangerousness. It takes crime for granted. It accepts deviance as normal. It is sceptical that liberal interventionist crime control strategies do or can make a difference. Thus its aim is not to intervene in individuals' lives for the purpose of ascertaining responsibility, making the guilty 'pay for their crime' or changing them. Rather it seeks to regulate groups as part of a strategy for managing danger. (1994: 173)

Emerging mechanisms such as incapacitation, preventive detention, electronic monitoring devices, drug testing, and the use of drug courier profiles were considered as exemplary techniques operating in this "new strategic formation". They identified three inter-related elements of this formation. First, the deployment of an actuarial discourse concerned with probabilistic calculations and statistical distributions applied to offender populations and how to manage public safety and the correctional enterprise itself (1992: 450, 452-454). Second, the establishment of system-wide penal objectives and cost-effective co-ordination premised on the "effective control" of "unruly groups" to make crime tolerable rather than fully eliminating it (1992: 450, 455-457). Third, the deployment of new predictive technologies to anticipate and neutralise risk (e.g., actuarial instruments designed to selectively incapacitate high-risk offenders) (1992: 450, 457-458). Irreducible to any one of these elements, all of which had different origins, Feeley and Simon argued that these elements "have coalesced to form what may be thought of as a new strategic formation in the penal field" (1992: 449). Given the forwards-driven logic that drives this strategic formation, they contended that a new way of conceiving the functions of the criminal sanction and the correctional enterprise had become institutionalised.

As the momentum for actuarial justice intensified over the course of the 1990s and the first decade of the 2000s (see Harcourt, 2007: 77-110), "justice" has increasingly become understood "through the rationality of the system" and its formal systems of internal rules, "analogous in many respects to computer programs" (Feeley and Simon, 1994: 178). Strategically, the aggregate risk management of offenders and technocratic rationalisation was interpreted as a managerialist and relatively closed technical system that insulated penal institutions "from the messy, hard-to-control demands of the social world" (1992: 456). By establishing criteria to measure the institution's success "against its own production processes" (e.g., the number of offenders supervised, the number of parolees breached and so on) expectations about penal sanction are lowered and the system's operational regime retains a far more attenuated connection with "the social purposes of punishment" (1992: 457).

Feeley and Simon (1994: 177-178) understand the aggregate risk management of people in the criminal justice system as a mode of "governmentality" that seeks to lower levels of crime rather than to discipline or normalise individual offenders.[1] Foucault (1991: 87) developed the concept of governmentality in his lectures about "apparatuses of security" (see Foucault, 2007), a set of problems specific to the regulation of populations that link security, population, and government together.[2] From this framework, a governmental apparatus is a technical ensemble "formed by the institutions, procedures, analyses and reflections, the calculations and tactics" that allow power to target a population where its principal form of knowledge is "political economy", and its operations deploy mechanisms of security.[3] Aleatory conditions within the

population, life itself, and economic processes are made calculable by statistical analyses of aggregated phenomena using techniques that analyse general trends, statistical estimates, and forecasts (2003: 234, 246). Governmental apparatuses exercise biopolitical power, originally defined by Foucault (1978: 139) as "a series of interventions and regulatory controls: a biopolitics of the population". These regulations and controls are focused on the "species body", an aggregate body "imbued with the mechanics of life and serving as the basis of the biological processes" such as births and mortality, health levels, life expectancy or the crime rate and calculations about all the "conditions that can cause these to vary". As mechanisms of security, biopolitical regulations legitimate, disqualify, or destroy modes of living that either reinforce or threaten the well-being and prosperity of society (2007: 29-54, 55-86; 2003: 253-260).[4] These mechanisms regulate by working through freedom to arouse or facilitate economy and the management of the population as well as to prevent or repress disorder, irregularity, illegality, and delinquency. Security apparatuses have three general features: they deal with a series of probable events; they evaluate through calculations of comparative costs considering these probabilities; and they specify an optimal mean within a tolerable bandwidth of variation rather than prescribing what is permitted or forbidden (Foucault, 2007: 6).

Since the 1970s there has been an increasing emphasis on neo-liberal forms of political deliberation and calculation that have reconfigured the state's role as the primary provider of security into a more limited one that steers and regulates apparatuses of security (Foucault, 2008; Rose, 1999: 137-166; Dean, 1999: 149-175; Rose, 2000). Interventions linked to income distribution and poverty were beginning to be displaced by a focus on mechanisms that "affiliate or expel individuals from the universe of civility, choice and responsibility" (Rose, 2000: 324). Feeley and Simon's account of actuarial justice does not consider the way in which neo-liberal rationales and techniques have also reconfigured regimes of crime control, especially in relation to neo-liberal strategies of responsibilisation. In devolving its responsibility as the primary provider of social security the state has urged agencies, organisations, communities, and individuals to assume an active responsibility for investing in and taking care of their security using technologies of prudentialism and by facilitating governmental partnerships (O'Malley 1992, 1996; Garland, 1996: 452; Rose, 2000: 327).

These responsibilsation strategies are evident in the actuarial risk management of offenders that attempt to "rehabilitate" offenders by promoting "a prudent and rational risk managing subject" (Hannah-Moffat, 2005: 34). American neo-liberals like Becker (1968, 1981) used analyses about the market economy to decipher non-market relationships or social phenomena, generalising the economic form of the market throughout the social body (Foucault, 2008: 240, 243). These analyses have been applied to domains such as the family to make intelligible parental investment in human capital as if this were a business, treating family members as contractual

parties who supply specific inputs to share in longer-term household outputs (2008: 243-245). This economic grid was also used to evaluate and shape governmental action by subjecting it to a "permanent economic tribunal" to criticise and appraise action in market terms (2008: 246-248). Neo-liberal formulations of penal policy assume that all individuals are at risk of committing crimes and attempt to regulate potential criminals as *homo oeconomicus* – anyone "who invests in an action, expects a profit from it, and who accepts the risk of a loss" (2008: 253). Penal practice does not aim at eliminating crime but at balancing the curves of the supply of crime and negative demand to establish a regulatory penal environment in which "action is brought to bear on the rules of the game rather than the players" but which nonetheless seeks to render potential criminals more responsive to the possible gains and losses of committing a crime (2008: 254-260). In this conceptualisation, *homo oeconomicus* is sensitive to modifications of variables in the environment and responds in a non-random way that can be systematically examined (2008: 269-270). In this framework, behavioural techniques can be employed to influence the play of stimuli and its mechanisms of reinforcement or dissuasion to determine their relative influence on criminal behaviour.

Although Feeley and Simon (1992: 188-189) draw attention to the commonality between economic analyses of law and procedure and actuarial justice in terms of cost-effectiveness, utilitarianism, reliance on quantitative analysis and emphasis on the performance of the criminal justice process, they do not explicitly consider neo-liberalism. Their emphasis on actuarial techniques aimed at identifying and incapacitating high-risk offenders[5] characterises these offenders as unresponsive to environmental regulation as they have fallen below the threshold of deterrence given their marginal or excluded status in the post-industrial economy. They understand the rise of incapacitation and other technologies of actuarial justice as a reflection of socio-economic forces that push "a larger portion of the population out of the range of normal economic signals" and that provide few or no opportunities for inclusion.[6] In their view, actuarial techniques install variable detention and community supervision depending on the level of anticipated risk rather than being anchored in rationales and practices to obtain restitution or rehabilitate or achieve other social goals such as work or education (1994: 179-180). They describe probation and parole as "alternatives to custody for lower-risk offenders" where supervision monitors the levels of risk based on a risk assessment and emphasises drug testing or other forms of intensified surveillance.

This grim forecast of exclusion is derived from a specific kind of actuarial prediction instrument that classifies anticipated levels of risk into high- and low-categories, facilitating the incapacitation of high-risk offenders and the risk management of low-risk offenders in the community to the extent that it can be demonstrated that this is an efficient way of managing dangerous sectors of the population (Rose, 2000: 332). O'Malley (2006: 45) contends that this

portrayal of actuarial justice aligns with risk management schemes developed in the UK and the US in the early 1980s (see Floud, 1982; Greenwood and Abrahamse, 1982) that extended risk prediction into the sentencing domain thus "refocusing […] justice onto protection of the community rather than the reform of the offender" and placing the burden of risk on repeat offenders. Rose (2000: 332) does not accept that the increased focus on risk assessments, risk classifications, the risk factors that distribute criminal behaviour in the population, and the strategies for prevention and risk minimisation "amounts to a total shift to actuarial control". In his view the growing emphasis on risk management has normalised collective risk mentalities concerned with "bringing possible future undesired events into calculations in the present" whereby professional decision-making becomes focused on risk minimisation. He argues that risk classifications (despite their fallibility) operate as systemic rules for thinking, acting, and justifying actions within a network of standardised information flows about risk. He understands this as a dispersed "expert system" of risk information sharing and management across a network of diverse authorities, the courts, the police, and other criminal justice decision-makers that have consequences that extend far beyond the initial occasion where a risk assessment was conducted.

Rose (2000: 333) contends that risk management authorities assume a primary role in the administration of marginal populations that live in the wake of post-welfare governmental regimes to ensure community protection by identifying the riskiness of individuals, actions, forms of life and territories. Consistent with Foucault's reading of the American neo-liberal's economic analysis of crime, apparatuses of risk management aim to generate risk knowledge that can identify thresholds of acceptable risks thus generating metastable circuits of inclusion and exclusion.[7] This differs from universalising social logics that spread risk collectively, where diverse authorities now focus on the poor, welfare recipients, offenders, discharged psychiatric patients and so on within a logistical framework of risk management to ascertain "who can, and who cannot, be managed within the open circuits of community control"(2000: 333). In his view, the incompleteness, fragmentation, or failure of risk assessment and risk management poses no threat to this logic of control; rather, it operates as "a perpetual incitement for the incessant improvement of systems, generation of more knowledge, invention of more techniques, all driven by the technological imperative to tame uncertainty and master hazard" (2000: 333).

Rose provides a more complicated diagnosis of actuarial risk management that establishes a network of mobile relations between the prison, community punishment, policing, and post-welfare regimes of workfare, as well as the community management of segments of the population with disabilities and/or mental health difficulties. He acknowledges the growth of confinement without any effort to rehabilitate offenders but cautions that "it would be a mistake to think that the logics of control pay no attention to the transformation of the excluded

individual" (2000: 334). In the reconfigured neo-liberal penal/welfare complex that he maps, programs have been installed that promote an ethical reconstruction of the post-welfare subject and other marginal subjects "in the attempt to instil the capacity for self-management", greater self-control, or "even enhanced entrepreneurship" (2000: 336). These self-improvement programs impose intense behavioural management controls aided by psychological techniques, including cognitive behavioural programs to incite self-reliance and the capacity for individuals to accept responsibility for their situation rather than blame others. Welfare dependency, substance abuse, or criminality are treated as a problematic "subjective condition" divorced from its social determinants involving faulty thinking and a problem of the will (2000: 335).

The governmentalisation of risk aligns with Foucault's (2008: 225) account of neo-liberalism, which imposes an economic grid that is not so much targeting the individual but rather "enterprises". An emphasis is placed on "creating active individuals who will take responsibility for their own fates through the exercise of choice" (Rose, 2000: 337) where the individual is constituted as "a sort of enterprise for (the self)" (Foucault, 2008: 225). Even though Rose draws different conclusions to Feeley and Simon, these scholars interpret contemporary risk control rationalities and technologies in a Foucauldian way as having a "strategic coherence" (Rose, 2000: 337). According to Rose, at the heart of this biopolitical problematisation of threats to security is the "problem of control in a 'free society' and hence the kinds of subjects that are imagined and deserve such a society". The perpetrators of crime are constituted as having failed to accept their responsibilities "as a subject of a moral community" and are targeted for "ethical reconstruction" using self-steering mechanisms. Their conduct is problematised as a moral problem that violates the bonds and trust of community life, a violation of the rights of others to contentment and the pursuit of happiness, and a violation of responsible self-control and self-advancement through legitimate consumption.

0.1.1 ACTUARIAL PREDICTION INSTRUMENTS AND THE LIMITS OF PENAL SCHOLARSHIP

Feeley and Simon, O'Malley, and Rose all understand actuarial prediction as a key "technology" used in risk management regimes, and yet they pay little attention to the concrete operations that enable specific "technologies" to function in a particular way. Governmental analyses of contemporary "technologies" of punishment focus on the intelligibility of the power strategies that can be discerned within contemporary penal formations. Thus, agency is attributed to the power strategy, occluding the specificity of the technical object and the relations it establishes to modulate an ensemble of technical-human relations. Are all actuarial technologies of prediction the same? How does their individualised character make a difference in the overall regime of functioning of the penal formation? "Technology" is an abstract term described in various ways as a "technology of government", a "technology of power", and a "technology of

the body". At some epistemic threshold these analyses understand that power begins to function as a "political technology", constitutive of the emergence of a more regular and continuous relation between the powers fostered by a particular form of power (e.g., disciplinary, biopolitical) and its related "[…] techniques: and the functions and knowledge of individuals, bodies, their forces and capacities" (Dean, 1996: 55).

While actuarial risk management is a technical enterprise and a neo-liberal mode of control that disperses regulation through technical-human networks, analyses of governmentality over-rely on Foucault's formulation of the role of technology in serving the interests of society and technology as a strategy of social control (Brown, 2006: 227). Brown (2006: 235) has argued that governmentality scholars emphasise the cognizant drives of institutions propelled principally by human cognition or social principles. This is epitomised in Foucault's lectures delivered at the College De France in 1976, published under the title, "Society must be defended" (2003). While Foucault's concern was with providing an alternative system of representation of the nondiscursive social field, his analysis concentrated on the logic of power strategies and its epistemic coherence to those strategies (Davidson, 2003: xvii-xix).[8] This was reflected in his account of "biopower" – the state's political power to take "hold over life", a technology of power "to foster life or disallow it to the point of death" (Foucault, 2003: 239; 1978: 138). Foucault provided two diagrams of biopower that describe their differential modes of functioning "[…] abstracted from any obstacle […] or friction (and which) must be detached from any specific use" (Foucault, 1977: 205, cited by Deleuze, 1988: 34; see Foucault, 1978: 139-145; 2003: 242-247). Discipline and biopolitics possess a strategic logic that seeks to control the entire social field thus restructuring relations, practices and modes of thought. The power diagram displays the relations between forces that constitute power acting as a mechanism that has the capacity "of making a function through these power relations" (Foucault, cited in Deleuze, 1988: 36).[9]

Even those scholars who interrogate and problematise contemporary modes of punishment using alternate frameworks to analyses of governmentality afford analytic privilege to social theory. I contend that this line of analysis also pays insufficient attention to the concrete operations of specific technologies and how they mediate relations in the domains in which they operate. This field, which has been coined "punishment and society", began to take shape in the 1970s comprising a new inter-disciplinary field that is relatively autonomous from criminology, sociology, and history (Simon and Sparks, 2013: 4-12). Scholarship "placed the changing nature of punishment at the centre of an inquiry into the question of the social order" (2013: 4).[10] Since the 1990s, there has been a spectacular growth and maturation of scholarship in this field that attempts to make sense of the dramatic changes in penal policy and practice and their uneven effects. Mass incarceration and transformations in community punishments associated with the

"pronounced deflation of the rehabilitative ideal and […] penal welfarism" have been analysed in terms of the wider structures of inequality, changes in global capitalism and economic structures, changes in political cultures associated with neo-liberalism, and cultural anxieties associated with political and economic change, and a broad range of social theories have been called on to aid analyses (2013: 10).

Brown (2006: 227) considers that "the technical" has been treated as a specialism associated with domains such as cybercrime or electronic surveillance rather than being considered as core to criminological inquiry, often drawing on rather than building theory. She has argued that analyses of criminal justice can no longer rest on analyses of social interest and motivations but must begin to address the "technological properties of the body politic, and of the institutional landscape of control, as inseparable from their form" (2006: 236). In her view, social theory is no longer sufficient to comprehend contemporary forms of criminality, legality, and regulation. There remains a need to recognise and interrogate technical-human relations without falling into the trap of either social or technological determinism. More recently, Haywood and Maas (2020: 2) have argued that most criminologists not only have largely evaded concrete analyses about technology, but they also have "shown a studied disregard for theories from other disciplines" that have been used in the fields of information and communication technologies and that could aid these analyses.

Within critical scholarship that has focused on actuarial risk assessment there has been limited attention on how these technologies "have the power to constitute practice through the relations between penal authorities and specific kinds of technical objects" (Phillips, 2017: 212). In Phillips's review of the literature in relation to the technology of probation (which has been the predominant site of critical analyses in the wake of Feeley and Simon's account of actuarial justice), the focus has been on empirical studies that evaluate the extent to which the adoption of actuarial risk assessment instruments has impacted on policy and practice. Many of these conjunctural analyses have foregrounded the agency of the parole or probation officer to "mould" risk case management practice in greater alignment with "practitioner values and preferences" (Bullock, 2011: 132).[11] Often these kinds of analysis use ethnographic or qualitative interviews as a key method to capture the culture of a regime of risk practice at a moment in time rather than in terms of its evolution. Some have even argued that there is a "governmentality gap" between penological scholarship concerned with relationships between changing penal rationalities and technologies and penality-in-practice (McNeil et al., 2009). The research not only restores human agency into these analyses (Cheliotis, 2006), it tends to locate it in terms of its relationship with the social field where the technical object assumes a more marginal or absent status and where it is treated as if it is a fixed or static object.[12] This is particularly evident in ethnographies of community punishments that use Bourdieu's field

theory to examine the practice cultures of penal agents who sustain enduring welfare-oriented dispositions within a punitive field (see Deering, 2011; Robinson et al., 2013; Grant and McNeill, 2014; Grant, 2016; and Phillips, 2016). For example, Grant (2016: 750) hopes that this kind of analysis provides "a conceptual starting point for an emerging sociology of community punishment". By incorporating an analysis that moves "[…] between the inside and the outside of technical objects" (Akrich, 1992: 206) my analysis contributes to our understanding of a technical object's participation in building, maintaining, and restructuring technical-human relations.

0.2 LOCATING AN ANALYSIS OF ACTUARIAL RISK ASSESSMENT TECHNOLOGIES IN SCHOLARSHIP ON TECHNOLOGY, CRIME, AND THE LAW

In recent times actuarial justice has figured in a rapidly expanding scholarship on technology, crime, and the law in the wake of a rapid expansion and constantly shifting landscape of information and communication technologies, biotechnologies, and technologies of artificial intelligence which have provoked a diverse range of problematisations concerned with regulation and technological management (Brownsword and Yeung, 2008; Brownsword and Goodwin, 2012; Brownsword, 2019). These technologies and their infrastructures draw attention to the need for legal regulative frameworks considering concerns about privacy, confidentiality, and data protection as well as for critical inquiry about how these technologies operate as regulatory instruments in ways that both support and challenge the traditional forms of legal regulation. Marks et al. (2018: 706) argue that there is now a rapid movement towards "an increasingly automated justice system that undercuts the safeguards of the traditional criminal justice model" by prioritising efficiency and effectiveness and disregarding due process safeguards. They identify the actuarial approach as being consistent with "automated justice":

> A central precept of actuarial justice […] is that the system should be less concerned with traditional punishment based on downstream or after-the-fact goals such as retribution and rehabilitation. It should instead manage risk presented by the dangerous and disorderly, using upstream or pre-emptive techniques of disruption, control, and containment. The shift from retribution and rehabilitation towards prevention means that the state seeks to identify potential criminals before they commit offences. (2018: 708)

Writing in 2006, Feeley argued that it would become possible for the diverse domains of criminal justice to become "a new unified actuarial 'system' that completely transforms the criminal process into an administrative system" that operates in ways that justify harsher treatment of individuals before and after being found guilty of an offence rather than predicating actions on

rights-based strategies (2006: 231). Brownsword (2019: 4-6) has described this more broadly as "technological management" referring to the use of technologies and their related infrastructures aimed at managing or controlling certain kinds of risk through the design of products or places or the automation of processes that have the potential to replace or considerably shrink the operations of criminal and tort law. Technological management using bio-management, smart networks, blockchains and so on that support people's multifaceted transactions and interactions will increasingly restructure the social order and how it is regulated.[13]

In his examination of technologies that generate data to anticipate and prevent crime (which he broadly describes as being actuarial), Brownsword (2019: 206) is concerned with the question of how far is it acceptable to go with the technological management of crime? The normalisation of anticipatory technologies within criminal justice enables regulators to use technological instruments that are ex ante, "aiming to anticipate and prevent wrongdoing rather than punish or compensate for the event" (2019: 188). This is in contrast with legal rules that "back their prescriptions with ex post penal, compensatory, or restorative measures" (2019: 187-188). The imperative to reduce crime as the primary regulative objective and its related "regulatory-instrumentalist mindset" places considerable pressure on the due process elements of criminal justice, especially in relation to police powers, the admissibility of evidence, the right to silence, and the boundary between investigative and probative stages of the criminal justice process (2019: 207).

Automated justice heralds the more widespread use of smart machines, the use of big data, predictive policing, more rhizomatic forms of surveillance, summary justice, and the new forensics that subordinate the rights of individuals to the promises of these technologies to prevent crime (Brownsword, 2019: 209; Marks et al., 2018: 709-713).[14] New predictive instruments are now available for assessing and managing the risks of crime that are enabled by machine learning and artificial intelligence that extends the logic of detecting and punishing crime to pre-emptive measures for preventing crimes before they occur (Brownsword, 2019: 20). Brownsword (2019: 210-212) agrees with the arguments advanced by Harcourt (2007: 3) that the integration of actuarial technologies into the processes of criminal justice subvert the spirit of just punishment. In Harcourt's view, these technological advances have been developed by technocrats who "have no normative stake in criminal law", raising troubling questions about "what theory of just punishment we would independently embrace and how is it exactly, that we have allowed technical knowledge, somewhat arbitrarily, to dictate the path of justice" (2007: 3, cited in Brownsword, 2019: 211).

0.2.1 THE DIFFERENTIAL NORMATIVITIES OF TECHNOLOGY AND OF THE LAW AND CRIMINAL JUSTICE

Hildebrandt (2008: 177) has argued that an important first step in interrogating any specific kind of technology is to describe and evaluate its "normativity", that is, its capacity to regulate human interactions. In her example of smart cars, the codes that are embedded in the architecture of the technology can regulate behaviour by channelling or modulating the general orientation of driving behaviour and the decisions that are made and technically prohibit the continuation of the journey. The digital architecture that is coded into the technology has "law-like" implications that "determines what people can and cannot do" (Lessig, 1999: 59, cited in Hildebrandt 2008: 178, *fn*14). Technical normativity has an impact on the structuration of individual and collective conduct and the emergent regimes of practice and truth, including the constitution of law and criminal justice, albeit in reconfigured ways.[15] At the same, it is evident that technical normativity and legal normativity are of different orders of magnitude that are difficult to reconcile. Arguing against technological instrumentalism, Hildebrandt insists that "legal and technological instruments are not exchangeable tools to achieve specific policy objectives" as the law operates at a meta-level "that cannot be reduced to being just one of the instruments of government policy making" (2008: 178). Her stance is situated in a normative framework of constitutional democracy law that claims that it sustains a balance of power between citizens, business enterprise, and the state.

The normativity of the law is embodied in the technology of the written and printed script (Hildebrandt, 2008: 179). The printing press provided the necessary conditions for the written law to be instrumental to the modern nation-state by providing the means for a detailed rule by law, while establishing an autonomous class of lawyers who interpreted and sustained the "intrasystemic coherence of the law" (2008: 184-185). Its regime of veridiction and evolution is founded on a modernist ontological and epistemic tradition that differs from the foundations of the data sciences and their technological systems for data mining, data profiling, and pre-emption.

> The deep structure of modern law has been built on the affordances of the printing press: on the linearity and sequential processing demands of the written text, which invokes the need for interpretation, reflection and contestation. The study and practice of the law have thus been focused on establishing the meaning of legal norms and their applicability to relevant human interactions, while establishing the meaning of human action in the light of applicable legal norms. (Hildebrandt, 2016: 2)

This is in stark contrast to data-driven technologies such as machine learning and profiling, which generate information about collective behaviour from populations to produce a multiplicity of machine-readable attributes generated by algorithmic codes. These codes are used to perpetually modulate "dividuals", control access to information, health care or territory, regulate rates of monetary exchange, nudge consumptive behaviour, and track their licit or illicit behaviour within a more continuous and metastable mode of control (Hildebrandt, 2013: 226; Deleuze, 1992: 5-6).[16] Information accumulates a "bank" of aggregate data to profile and regulate segments of the population rather than being applied to individuals (Hildebrandt, 2013: 226). This mode of control is not concerned with meaning but rather with behaviour, understood as "an aggregate of attributes that cut across and divide the *in*dividuals into their elements, characteristics, properties or attributes" (2013: 227). Data-driven technologies have no interest in human motivation or the reasons for acting (Hildebrandt, 2016: 29). Mechanisms of control locate "[…] the position of any element within an open environment at any given instant" establishing a more continuous mode of regulation that increasingly overlaps across time and space (home, education, work, and leisure) (Deleuze, 1992: 7; Hildebrandt, 2013: 230).

The law's mode of existence is technological in that the law involves "creating, storing and retrieving information", but it operates in a way that is irreducible to a computational understanding of this informational process (Hildebrandt, 2016: 6). Its constitutive relations are concerned with the tension and contestation between justice, legal certainty, and purposiveness. The practice of law is not equivalent to information retrieval as its legislators, the courts, and legal administrators must necessarily make judgements when deciding the law within a context of relevant legal rules, principles, relationships, and concepts that qualify what is legally relevant to perform legal effect (2016: 13-14).[17] Legal doctrine "interprets the content of these sources, taking into account their hierarchical interrelation […] to retrieve information from binding legal texts in anticipation of new cases" (2016: 14), and legal principles generate legal effect by explaining the applicable legal texts that help legal authorities to better read and articulate the conditions for legal effect. The operation of the law "is a prime example for the study of semiotics where legal concerns are centrally related to the nexus of meaning attribution, systemic analysis, and the imputation of legal effect (2016: 15-16). This differs from automated technologies that possess a relative autonomy, a "data-driven agency", a type of "artificial intelligence, capable of perceiving an environment and acting upon it, based on the processing of massive amounts of digital data" (2016: 4).[18]

0.3 A WAY TO CONTRIBUTE TO THE ANALYSIS OF TECHNOLOGY

Given that the law and technology operate using different kinds of normativity, it is necessary to objectively make sense of the technical operations that are used in predictive technologies that profile and anticipate behaviour in advance. This will help to develop a more precise understanding of how these probabilistic operations mediate human relations. We are then in a better position to critically evaluate a technical object's regulatory effects. How do these technical operations structure the calculations and decisions about what might happen in the future to take preventive action in the present? Amoore (2011: 38) considers this as a primary task for critical inquiry that sheds greater light on the "specific temporalities and norms" of anticipatory technologies such as those used in risk assessment instruments "that rule out, render invisible, other potential futures". The codes employed in these technologies are necessarily discriminatory in their functioning, mediated by human engineers and their intuitions, values, biases, and dispositions that have been built into these technical schemas and probabilistic equations. Hildebrandt (2013: 238) has described this as a "transparency requirement" that helps us to see more clearly how we are being clustered, correlated, profiled, and acted upon to "distinguish between the empowering and destructive affordances" of the technology. To what extent do the computational models and their techniques of calculation "create room for new actualisations" or the realisation of new potentials? Or do they limit possibilities because of over-determinate technical arrangements?

In Hildebrandt's view, lawyers (as well as criminologists) need to be able to engage with the "concepts, operations and grammar of computer science and information theory" so that they are able to collaborate with the human mediators of these technologies and their data-driven architectures to "accommodate human action, to safeguard the fundamental uncertainty and indeterminacy it assumes, and to protect the pinch of freedom and autonomy that defines us" (2016: 30).[19] By exploring new possibilities for data-driven regimes through experimentation Hildebrandt provides a conception of information as "information that acts as a subject or agent upon something else", thus "shaping, forming or moulding something" (2016: 21). Information in-forms something, implying that it must precede it and at some threshold, become "integrated into the operations" of something else. Information has the capacity to make a difference in structuring "perception and cognition, while being contingent upon the receiving agent and whatever affords or sends the message" (2016: 19). Information in-forms the structure of a probability space by means of its techniques of data mining, anticipatory pattern analyses, and calculations. At the same time, it has the capacity to in-form and restructure the relations of both the law and criminal justice because of the informatic potential of the encounter between differential matter and relations. Hildebrandt (2016: 2; 2008: 179) envisages a mode of novel

data practice between data scientists and lawyers that examines the challenging aspects of automated technologies by establishing new lines of co-constitutive relations without exclusively using the law's foundations in interpretation and contestation to regulate a technology's normative impact (2016: 2; 2008: 179).[20] In her account of information Hildebrandt considers that it is important to overcome the hidden bias that is taken-for-granted within a technology's existing anticipatory structure and that makes us blind to whatever escapes this operative structure, thus limiting our ability to test the assumptions and the operations that "nourish data-driven agency" (2016: 25).[21]

0.3.1 RATIONALE FOR THE CONCEPTUAL AND METHODOLOGICAL FOUNDATIONS OF THE THESIS

There is a need in analyses of actuarial technologies of punishment and the law and technology to employ theoretical and epistemic frameworks that can assist in the intertwined tasks of making sense of and evaluating the impacts of technology on the way in which criminal justice operates. Over the past 25 years, in response to the proliferation of anticipatory and other digital frontier technologies, diverse theoretical frameworks have increasingly been employed by criminology and legal scholars to bring about greater transparency about how these technologies operate. These theoretical frameworks have included Lessig's (1999) conception of the electronic code of computer systems and networks to examine the relationships between law, technology, and social regulation; Rouvroy and Berns' (2013) analysis of algorithmic governmentality; actor-network theory (Law, 1992; Latour, 1996, 2005); Lupton's (2014, 2016) theorisation of digital data-human assemblages; and, the concept of the technological unconscious (Thrift, 2004; Beer, 2009; Wood, 2016).[22]

While these theoretical frameworks provide vital ways of making sense of the complex relations between technology and humans and the co-emerging impacts between technology and humans, humans and technology, and technical networks (socio-technical networked relations, and the interoperable relations between different networked technologies), my research adopts a novel theoretical framework to interrogate the capacity of a technical object to mediate human relations in the milieu in which it operates to grasp its operating values and norms and the results of its regime of functioning. I draw on the philosophy of Simondon (2017), who has a unique understanding of information as a generative process that brings a technological object into being and that, because of tensions in its functioning and relations with the milieu in which it operates, provides an impetus for its evolution. His processual thinking about the "mode of being" of technical objects is compelling. It assists in overcoming the tendency to view any technical object as being static or determinate to better grasp how its internal operations mediate relations in the milieu in which it exists and the flux of informational forces that are

mediated by humans who take responsibility for the ongoing modification of its operations and its relations with the milieu in which it operates. From this latter viewpoint, the role of information in harnessing new potentials for technical-human relations is brought into sharper focus. Simondon offers a conception of information that is congruent with Hildebrandt's stance that we become more proficient in engaging with the operations of computer science and information theory outlined in the previous section. However, Simondon does this in a way that substantially revises the cybernetic conception of information that Hildebrandt is referring to (Coombes, 2013: 5). Simondon's philosophy about the mode of existence of technical objects is briefly outlined in Section 0.3.1.2 below and detailed further in Chapter One, including his unique conception of information (see section 1.4). My research adopts a case study approach to make sense of, and critically evaluate actuarial risk case management in Youth Justice, New South Wales, Australia.

0.3.1.1 RESEARCH FOCUS AND AIMS

My key focus is to critically analyse the mutually constitutive operations of actuarial risk assessment and case management that are modulated by the YLS/CMI in Youth Justice NSW over time. Analyses of actuarial justice in the youth justice field have not been afforded the same level of attention as modes of actuarial justice in the risk management of adult offenders. Moreover, research has concentrated on carceral settings rather than risk classification and case management of vulnerable young people in community settings (Goddard and Meyers, 2017: 153). The rise of the "risk factor prevention paradigm" and its use of risk assessment instruments for risk classification and risk management in youth justice has been a focus of critical scholarship because of widespread concerns about its detrimental outcomes for young people (e.g., Pitts, 2001; Hannah-Moffat and Maurutto, 2003; Webster et al., 2006; Case, 2009; Haines and Case, 2008; Gray, 2009; Goddard and Myers, 2017; Yassine, 2019; Goldson et al., 2021).[23]

Many of these analyses reflect the same shortcoming described earlier, as the research pays insufficient attention to actuarial risk assessment instruments themselves to assist in critically evaluating their impact on young people. Most of this scholarship has concentrated on a broader and multifaceted critique of the limitations of prioritizing instruments that rely upon quantitative risk-focused research to predict future offending that locate risk exclusively in the psychosocial (psychological, family, school, peer, and neighbourhood) domains of childhood and adolescence, neglecting wider social, cultural, and political contexts (e.g., see Annison, 2005; MacDonald, 2006; Case, 2007; Case and Haines, 2009; O'Mahony, 2009). The evidence-base underpinning the risk factor paradigm has been questioned on methodological grounds as being "self-fulfilling and reductionist" and insensitive to individual, social, and temporal differences relating to age, gender, ethnicity, socio-economic status, local area, country, history, and the

type of offences committed (Case, 2007: 93, 97). O'Mahoney (2009: 107) has criticised the paradigm as failing to question its foundational assumption that the relevant unit of analysis is the individual, and for its general neglect of socio-cultural and temporal variation, which inevitably supports the legal and political status quo, and its failure to account properly for key facets of youth justice including personal agency, psychological motivation, and human rights (2009: 99).

The risk factor paradigm and its evidence-based priorities are generally understood as the logical driver of neoliberal correctionalism and responsibilisation in youth justice (Case and Haines, 2014: 2). The paradigm is widely criticised for limiting how interventions are delivered to assist young people to foster better life outcomes because it mechanises, standardises, and limits practitioner discretion. At the same time its evidence-based programming imposes a prescriptive, deficit-based, punitive, and adult-led program of risk prevention interventions that ultimately hold disadvantaged young people responsible for their structural disadvantage (Case, 2006, 2007; Goddard and Meyers, 2017). Evaluation of these interventions has been criticised for being narrowly focused on recidivism and being "[…] uncoupled from a more ambitious and transformative understanding of youth justice" (Goldson et al., 2021: 37). In their critical account of risk management in youth justice in Australia, Goldson et al. (2021: 37-39) refer to the risk assessment tools and risk management programmes in place in Australia since 2002 that predict and target criminogenic needs relative to the risk of re-offending; however, these instruments are not examined in any detail. Again, these instruments are criticised in general terms for legitimating and rationing offender programs in accordance with risk-based classifications that effectively have a punitive and net-widening effect. The most structurally and socially marginalised children and young people are targeted because they are assessed as being a risk to community safety, a population that not only includes those in the criminal justice system but also the "[…] 'near criminal', the 'possibly criminal'" (2021: 39).

My research contributes to this research and its core concern with the welfare and rights of young people for successful integration into the communities in which they live. Young people in the youth justice system have a right to interventions that promote their well-being, that reduce the need for intervention under the law, and that ensure a meaningful life in the community (see *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, 1985, Rule1). By conducting a close analysis of how the YLS/CMI mediates the risk assessment and risk management of young people, the research contributes to a better understanding of its effects on young people.

My case study researches the interval between the introduction of the YLS/CMI into Youth Justice in 2002 up until 2022 to grasp its regime of functioning and its regulatory impact on

evolving youth justice policy and practice as well as its impact on young people's lives. By considering this time frame, it possible to evaluate the extent to which the technical individualisation of the aggregate risk case management of young people has been transformed over time to evaluate its capabilities and limits. The research aims to critically respond to the following questions:

1. How does the YLS/CMI mediate actuarial risk case management over the course of a young person's time spent under the control of Youth Justice NSW? (Addressed in Chapters 2,3 ,4 & 7.)
2. To what extent has the YLS/CMI's operational structure been transported into new domains of operation within Youth Justice NSW? (Addressed in Chapters 3, 6 & 7.)
3. How can the modifications that have been made to the YLS/CMI over time be understood in terms of its receptivity to conflictual values and norms? (Addressed in Chapters 2 & 5.)
4. To what extent has the sustained maintenance of the YLS/CMI as a key instrument for governing youth justice limited the possibilities for responding to young peoples' life experiences? (Addressed in Chapters 5 & 7.)

0.3.1.2 THE TECHNICAL OBJECT AND ITS INDIVIDUALISATION

In analysing the above questions, I engage Simondon's (2017) philosophy of the mode of existence of technical objects as my primary interpretative lens. In addition, I draw on other theoretical frameworks to assist in the analysis of the legislative, policy, and governmental aspects of these research questions. This includes Foucault's (1978, 1991, 2003a, 2007, 2008) concepts of governmentality, biopolitics, and security; literature about anticipatory regimes of government (e.g., Adams et al., 2009); Berlant's (2007) concept of slow death; and Flores' (2016) account of wraparound incarceration.

Simondon's primary concern is to follow the constitutive relations that bring a technical object into being and that continue its evolution. Simondon (2017: 45, 151) understands a technical object as having an individuality that can be grasped by identifying its abstract internal schema of functioning that enables it to establish determinate relations in the milieu in which it operates. Moreover, he demonstrates that this individuality is subject to successive phases of individualisation where modifications are made to elements of its internal domains of operation to restructure its functioning at another level of operation that possesses a greater degree of multi-functionality. A technical object's functional schema is a possible solution to a problem that remains open to variation in the internal distribution of its functions as it encounters obstacles to its own operation (2017: 32).

Simondon (2017: 26-27; 45-46) defines the individuality and specificity of a technical object in terms of its genesis. This is understood as the invention of a provisional and imperfect functional technical schema given a technical problem that requires a resolution. A technical object's abstract technical schema – its "essence" – is intelligible given the interoperability between its internal domains of operation and how these differential functions actualise determinate effects as a convergent series of reciprocal relations between the technical object and the milieu in which it operates. Technical invention is a "process that surpasses the individual psyche" that often involves a succession of inventors separated in time and space that communicate through already existing technical objects (Voss, 2019: 10). Invention demands an awareness of a technical problem to be solved and a "kind of 'vision' that represents a state that does not yet exist and in which a problem is solved". The genesis and ongoing technical individualisation of a technical object is an individualising operation that occurs at the "play of limits" involving a "leap" across a threshold problem where there is a "conditioning of the present by the future" (Simondon, 2017: 32, 60; 2012: 4). Given the inherent margin of indeterminacy in a technical object and the obstacles it encounters in its operational milieu, invention is perpetuated as others partake in its phylogenetic lineage to improve its functional schema at new thresholds of operation by modifying some of its elements to realise new potentials.

0.3.1.2.1 FOLLOWING THE "OPERATION OF INDIVIDUATION": ANALOGICAL THOUGHT

Simondon considers technical individualisation as a mode of existence commensurate with the sciences or the arts, a fundamental human mode of relating to the world (Viana, 2015: 34). His philosophy of technology is a field of inquiry within his far more wide-reaching philosophy of individuation that is outlined in Chapter One. Simondon (2020: 1-3) seeks to understand the individual as an "operation of individuation" that results in the appearance of the constituted individual (technical, physical, living or otherwise). He advances an understanding of the individual as "merely a certain phase in the process of becoming *as becoming* or a crystallisation from a pre-individual set of possibilities that are not fixed" (Landes, 2014: 157, author's emphasis). The individual is understood as being a "relative reality" that necessitates a transductive description where thought follows being in its genesis and across its diverse phases and multiple individuations (Combes, 2013: 6-7).

To develop an understanding of the operation of individuation a mode of thought is required that grasps the real operations in which structures become constituted (Combes, 2013: 13).[24] Simondon (2020: 13) understands this as a transductive process, "an individuation in progress". How does this individuating process develop in its pre-individual environment? (Sauvagnargues, 2012a: 5) Simondon contends that, prior to individuation there must be a metastable system where there is a state of disparation: the "existence of at least two different dimensions, two

disparate levels of reality, between which there is not yet any interactive communication" (Deleuze, 2004: 87; Simondon, 2020: 6). In a state of metastability, an energetic relation is activated given an objective problematic situation because of the incompatibilities between the difference of potential energies. A transductive operation establishes "an interactive communication between dimensions or disparate realities […] to resolve the problem which disparate realities pose, by organising a new dimension in which they form a unique whole at a higher level" (2004: 87).The operation of individuation is an inventive solution that is made possible by the constitutive differences of relational elements, the discovery of a new dimension that provides an entirely new configuration of being (Sauvagnargues, 2012a: 10). The discovery of the "resolving structure" of the initial tension of a system deploys a transductive logic that is intuitive to resolve the state of tension (Simondon, 2020: 15). It operates by the "inversion of the negative into the positive" becoming "a condition of signification" in the individuating system's passage from a state of metastability to a provisional state of equilibrium that remains rich with potentials.

Simondon (2020: 667-673) characterises the mode of thought that follows being in its genesis as deploying the analogical act. He defines this as the "putting into relation of two operations" that energise a state of disparation as it begins to resolve the tensions that exist between two potential states of being (2020: 666, 668). Analogical thought establishes a relation between two different "essential operations" (i.e. two beings or two different realities) that begin to establish a "rapport" with one another in the individuating process that brings into being a novel defining structure. In Deleuze's (2004: 88) exegesis of Simondon "individuation is thus the organisation of a solution, the organisation of a 'resolution' for a system that is objectively problematic". This can be understood in two complementary ways: on the one hand, as the emergent internal resonance as two different realities begin to communicate with one another to being into being a new constitutive structure; and, as information that establishes communication between two disparate dimensions of reality, the emergent signification "where an operation of individuation will discover the dimension according to which two disparate reals can become a system" (Simondon, 2020: 11). In following the transductive operation of individuation, analogical thought establishes an epistemology that "transfers the knowledge of an operative schematism" which is at the same time "a schematism that consists in operations of thought" (2020: 668). The analogical method establishes a way of knowing an individualised structure "based on the operations that dynamise" it rather than the inverse.[25]

Combes (2013: 10) characterises analogical knowledge as a rigorous attempt to establish "a relation between the operations of individuals existing outside of thought and the operations of thought itself". She elaborates:

> The analogy between two beings, from the point of view of their operations, supposes an analogy between the operations of each being that is known and the operations of thought […]. We may speak of a coindividuation of thinking and the beings thus known, where the method gains an imminent legitimacy: "The possibility of employing an analogical transduction to think a domain of reality indicates that this domain is effectively the seat of a transductive saturation (Simondon, 1995: 31)". (2013: 10-11)

In my research there are some key disparate realities that are apparent: the conflicting relations of collective biopolitical security and individualised rehabilitation, the divergent realities of risk assessment and case management, the conflict in meeting the needs of the young person and the needs of the community, and the tensions between actuarial modes of operation and the pre-existing operations within the youth justice milieu. Within the context of critical scholarship about punishment my research is situated within two differential accounts about technologies concerned with the welfare sanction (Garland, 1981) and technologies of actuarial control (Feeley and Simon, 1992). Each of these two modes of operation have been abstracted and separated from one another without sufficient attention to how these operations may function in a reciprocal relation. My research seeks to make sense of the mode of existence of a family of risk assessment instruments where the risk assessment and case management functions of these instruments operate in a convergent way. I characterise this as a mode of technical individualisation that restructures the operational domain of individualised case management as an anticipatory regime of anticipatory and metastable data practice which has an identifiable phylogenetic lineage. My research will make visible how the differential operations concerned with the rehabilitation of young offenders and the aggregate management of risk for security enter a co-individuating relation that is operationalised in the YLS/CMI. This will assist to make sense of the YLS/CMI's individualising mode of being by following its modulating operations and their restructuration effects.

It is necessary to identify the genesis of the YLS/CMI to characterise its abstract functional schema of operation. Rather than starting from the determinate structure of a risk assessment instrument and its utility viewed from the outside, I interrogate the history of the "dynamic relation between potentials […] realised in the technical object and that develop there via inner resonances" (Schmidgen, 2012: 22). I follow this line of technical individualisation (traced back to the genesis of prediction in parole in the 1930s) to consider the regime of functioning of the YLS/CMI which was originally developed in the 1980s in Canada and that has been modified on three other occasions. After making sense of the YLS/CMI's regime of functioning and the relations this establishes with Youth Justice NSW, I trace its individualising operations between 2002 and the present. This makes visible any critical moments where the YLS/CMI's regime of functioning enters into conflict with other relational operations (e.g., in relation to diversion's

mode of operation) to critically evaluate how these tensions are resolved, describing how this restructures youth justice policy and practice. By putting into relation different realities the analogical method provides a way of studying singular cases of individuation by examining the actuarial technical object-milieu coupling and its domain of operations and structures of resolution.[26] My research seeks to advance our knowledge about the technical individualisation of actuarial youth justice, examining its capabilities and its limits since the YLS/CMI began reconfiguring a local centre "of power and knowledge" in Youth Justice NSW "by redrawing human-machine relations" using its anticipatory data practice to mediate the risk management of young offenders (Mackenzie, 2017: 9).

0.3.1.3 AN ARCHAEOLOGY OF ACTUARIAL OPERATIONS

I borrow this term from research conducted by Mackenzie (2017) where he undertook an archaeology of the technical operations used in machine learning technologies. He proposed that "attention to the specificity of practices is an elementary prerequisite to understanding human-machine relations and their transformations" (2017: 9). Foucault developed an archaeological method to describe the rules of formation and conditions of existence for maintaining and modifying the relational elements of a discursive formation of statements. He understood a discursive formation as being identifiable in terms of the regularity of relations between a series of statements and "their system of dispersion […] between objects, types of statements, concepts, or thematic choices" (1972: 38). The system of relations has a positivity evident in its mode of functioning, understood as the "rules of a practice that enables statements to both survive and undergo regular modifications" (1972: 130). I interrogate a technical archive that not only includes the operations of the YLS/CMI but also the efforts of human engineers who have developed this instrument and other instruments in this technical lineage, and other human mediators who have participated in collective labour to evaluate and optimise the functioning of the operations of these actuarial instruments and their integration into the penal milieu.

The archive that I use to conduct my analysis spans the actuarial work of Burgess and his colleagues in the late 1920s in the US and the actuarial work conducted by Andrews and his colleagues who began developing a network of "risk/need" instruments in the 1980s. While these actuarial risk assessment instruments were initially used in adult corrections in Canada and the US, they were later modified for youth justice jurisdictions and eventually transported into NSW. This archive is heterogenous in that it examines these technical endeavours and the institutional archive of Youth Justice NSW, which aligned its policies with the operations of the YLS/CMI. It also includes a wider network of evaluative research conducted within NSW and overseas concerned with optimising the operations of Youth Justice and the actuarial

instruments themselves. In a variety of ways that were technical, scholarly, and governmental, the archive includes the conflictual relations that have problematised both actuarial modes of operation and the operations of youth justice, challenging and augmenting the agency and reach of these modes of operation.

My archaeological method is not focused on a critical discourse analysis of actuarial risk assessment and case management in youth justice, but rather on the agency of the actuarial instrument and collateral instruments of support that have taken effect in the youth justice milieu. My primary concern is mapping these operations that modulate the risk classification of young people and risk case management that continue to propagate across new operational domains in Youth Justice. To the extent that there is a discourse analysis, it is concentrated on the technical mentalities brought to bear on the technical object, the reconfiguration of youth policy and practice in actuarial modes of operation, and the governmental problematisations that have arisen over time and coalesced around the relations between actuarial operations and broader concerns about the aleatory life conditions of young offenders and the efficacy of governmental programs.

An archaeology of the operations of actuarial justice is essential to thinking critically about the potentials and limitations that are available to us when we respond to the precarious conditions that many young offenders are experiencing. Identifying the statements and technical operations that constitute and limit the localised technical-human relations of actuarial risk case management is a "precondition to any transformations in practice" (Mackenzie, 2017: 217). What are the conditions, values and norms of operative functioning in actuarial risk case management, what are its rules of calculation that distribute subject positions and regulate the regime of risk management, and how do diverse authorities and young people communicate with one another? This also includes an examination of how specific techniques that cross-validate the referentiality of actuarial risk assessment and case management establish the potential and limits for the restructuring of technical-human relations.

Predictive technologies generate classificatory statements and modes of practice that rule out some futures while reinforcing others (Mackenzie, 2017: 7-8). This is one of the lessons provided by Foucault – while discursive formations incite a multiplication of what can be said and done and how statements can be modified, this occurs under strict conditions that establish "a law of rarity" that limits the collective field of practices (Foucault, 1972: 105, 118-119). One of the dimensions of discursive practices is their embodiment of techniques and effects that "makes it possible to grasp the set of constraints and limitations which, at any given moment, are imposed on discourse" (Foucault, 1972: 192). Simondon's (2017: 42-43, 153-159) concern with the evolution of technical objects and how they are modified to increase their synergy of functioning

by those responsible for them provides a rigorous way of clarifying the extent to which the actuarial instrument used in Youth Justice NSW and the political economy that supports it is open to receiving information at critical points or challenges to bring disparate forces into greater rapport for the benefit of young people. More broadly, Simondon's analogical method provides a way of identifying some of the key sources of conflict and incompatibility that emanate from youth justice and its established actuarial regime.

It is acknowledged that my research relies exclusively on archival and documentary sources including legislative, governmental policy documents and reports, and published research papers that are linked to the development of risk assessment instruments and evaluations of the predictive power of these instruments as well as evaluations of youth justice interventions. This is a limitation of this research in that my findings about how the YLS/CMI operates in Youth Justice NSW over time may differ from practices in the youth justice milieu as youth justice professionals may resist the technical mediation of risk case management and its supporting policy structuration, establishing a field of practice where multiple forms of practice co-exist (see Phillips, 2017: 210-213). This is a matter for further empirical research using qualitative and ethnographic methods to examine the extent to which there are important sources of tension or conflict in the networks of technical-human relations in Youth Justice NSW. At the same time, it must be acknowledged that the archive that has been examined is substantive and provides unique insights into the mutually constitutive relations of the techno-social network in which Youth Justice operates in NSW.

0.4 SYNOPSIS OF THE CHAPTERS

Chapter One introduces the key ideas used in my analysis: a technical object's invented schema of functioning, the process of concretisation, technical individualisation, the technical object's associated milieu, technicity, technical mentality, information, metastable equilibrium, metastability and becoming, transduction, and psychic and collective individuation. These concepts are central to Simondon's philosophy of individuation. He is broadly concerned with advancing a way knowing that does not begin from the constituted individual (technological or otherwise) but rather from the dynamic "operations of individuation" that bring an individuated state of being into existence and the forces that continue this individuation through successive transformative phases of individuation at a new level of being.

Chapter Two examines the collective body of work of the Ottawa School of actuarial researchers in Canada who developed the Level of Service (LSI) risk assessment instruments used in adult and youth penal milieus, and that were transported into New South Wales's adult and youth correctional systems early in the 2000s. This chapter establishes the foundation for my case

study about how the YLS/CMI mediates actuarial risk case management in Youth Justice NSW. I use Simondon's (2017) account of the genesis and evolution of a technical object to argue that these LSI instruments have a technical lineage that can be traced back to the work of Burgess (1928a, b) and others. Burgess invented an abstract functional schema for a family of actuarial risk assessment instruments that established reciprocal relations between the differential potentials of individualising rehabilitation and the aggregate risk management of offenders. I argue that Andrews and his colleagues concretised the Burgess expectancy tables at a higher level of functioning by integrating the risk assessment and case management functions of the LSI instruments so that there was a convergence of operations. However, these technical operations could not be stabilised without imposing an integrative series of principles of case classification concerned with risk, need and responsivity (Andrews et al., 1990). I critically outline the developers' technical and discursive strategies used to establish and maintain authoritative relations over how offenders are risk managed. I explore some of the ways in which these instruments have been modified and marketed as being "fourth generation" instruments to critically evaluate the claims that these "improvements" are more responsive to the "needs" of offenders. I argue that these modifications are less concerned with the needs and vulnerabilities of offenders and more concerned with exercising even greater control over the parameters of case risk management in alignment with the original instruments' principles of case classification while attempting to establish a system-wide level of quasi-automatic control.

Chapter Three overviews the policy trajectory of youth justice in NSW over the course of the 1980s up until the 1990s, and the ongoing reconfiguration of policy from 2002 as Youth Justice NSW aligned its operations with the introduction of the YLS/CMI. I characterise the synchronisation of policy with the operations of the YLS/CMI as a co-individuating force that mediates technical and human relations to establish a consistency of relations. Imposed from above, this established a functional solidarity across collective relations in Youth Justice. Initially the YLC/CMI was to be used in cases where young people were sentenced to youth detention or on a community control order. However, it was also incorporated into remand and bail management, youth justice conferencing as well as indirectly influencing sentencing. In describing how Youth Justice has adapted its policies to support the imperative to anticipate and combat criminogenic needs, I identify some of the ways that actuarial mechanisms undermine the rights of young people directly and indirectly, while imposing more intense controls on young people sometimes even before they are convicted of an offence. It is argued that the establishment of an actuarial operational formation in the networks of Youth Justice has established a more limitless, speedier, flexible, and continuous network of risk management and synchronous relations across the multiple intervening domains in which it operates.

Chapter Four provides a close examination of how the internal domains of the YLS/CMI modulate the risk assessment process and how this in turn mediates the ongoing assessment and risk case management of young people in the networked security milieu in which this instrument operates. I use Simondon's (2020: 13) concept of transduction to make sense of how the YLS/CMI's data infrastructure is operationalised across its internal domains of calculation to synchronise risk classification and case management. I argue that the elementary disparity between the predicted and actual level of risk – the essential indeterminacy of prediction – is combatted in the YLS/CMI by installing a switch-point or quantified review mechanism into risk case management to re-assess the anticipated level of risk and recalibrate the tactics of risk prevention accordingly. I characterise this actuarial regime as establishing a security milieu that is mobilised by a more continuous affective state of anticipation, an ethos of preparedness and preventive action in the face of an uncertain future. The logistics of risk case management enlists the young person in a program of conditional self-improvement that I argue sustains a tension between the possibilities of rehabilitation, stringent behavioural regulation, and difficulties in meeting the expectations placed on young people given their vulnerabilities and level of social exclusion.

Chapter Five evaluates the capacity of meta-analytic techniques to moderate the operations of actuarial risk instruments, including the YLS/CMI. After briefly describing the logic and technique of meta-analysis, I critically evaluate its capacity to precipitate modifications in these instruments in response to informatic forces that question whether the LSI network of instruments are discriminatory in their effects in terms of gender, race, and other representational concerns. I argue that meta-analytic techniques mediate these outside challenges using strictly technocratic operations. This limits their capacity to incorporate experimental data that might inform alternate modes of perception and action. The chapter demonstrates that the routine use of meta-analytic evaluation has a tendency towards homeostasis as it inherits a past conditioning of built-in constraints because of standardised parameters that have already been coded into the instruments being evaluated. When this research finds significant differences linked to gender, ethnicity, or socioeconomic inequalities, the human mediators of these instruments fall short of innovating to bring about any meaningful modification in the operations of the LSI instruments other than minor modifications to the norms of classification or additions to the instruments' responsivity factors. It is argued that meta-analyses operate as a technique of normalisation that legitimates the authority of these instruments rather than a being a productive force for altering their mode of operation.

Chapter Six concentrates on the evaluative research conducted by a group of researchers at the NSW Bureau of Crime Statistics and Research (BOCSAR) about the effectiveness of youth diversion in reducing re-offending to critically examine its impact on the rationales and practices

of youth diversion. This research heightened visibility about high rates of youth recidivism that conflicted with conventional wisdom and research that assumed that most young offenders grow out of crime. I argue that this research altered the perceptual gradient of these researchers in relation to the efficacy of youth diversion as they began actively campaigning for reform in youth diversion. Their proposals centred on establishing a risk screening mechanism in policing to identify "persistent offenders" who had been diverted but who, they argued, needed referral to an "early intervention" program to prevent their long-term involvement in the criminal justice system. I describe how this proposal was operationalised in the Youth on Track program established in 2013. I argue that this program and the campaign launched by these researchers deploys a precautionary logic that undermines the legislative principles of youth diversion outlined in the *YOA, 1997.*

Chapter Seven evaluates the state's culpability in the maintenance and debilitation of children and young people in the criminal justice system by over-relying on the YLS/CMI in its response to the vulnerabilities of children and young people. I examine two sources of biopolitical tension concerned with the over-representation of First Nations children in the youth justice system, and the care criminalisation of children who are removed from their families and taken into out-of-home care. It is argued that not only does an actuarial risk assessment of these populations legitimate more punitive interventions, but also that the "diversionary" programs that respond to the traumatic histories and heightened vulnerabilities of these children have generated a mode of "wraparound incarceration" (Flores, 2016) that justifies a mobile and disabling mode of behavioural containment in the community. Rather than diverting these children from the justice system, their involvement is intensified reproducing the unequal relations of settler colonialism and the structural disadvantage of being taken into care. I argue that the more recent "innovations" that purport to be "trauma-informed", or more responsive to the "complex needs" of children, are increasingly being managed through a welfare-justice control apparatus that retains a focus on the targeting of criminogenic needs. In operationalising these diversionary "alternatives" in this way the cultural differences and the vulnerabilities of children are managed as if they are obstacles to combatting criminogenic needs, using the deficit and control logics of wraparound incarceration.

CHAPTER ONE: GILBERT SIMONDON AND THE PHILOSOPHY OF INDIVIDUATION

1.1 INTRODUCTION

This chapter provides an account of Simondon's philosophy of technology, while situating it within his more wide-reaching concern with the processes of individuation. I use his philosophy of the operations of individuation as my primary lens for analysing the genesis and ongoing technical operations of the Youth Level of Service/Case Management Inventory (YLS/CMI) which continues to regulate the anticipatory relations of risk case management in Youth Justice NSW. While many analyses begin from the position where an individual is viewed as already being constituted and then proceed from that point of view, Simondon (2020: 1-3) approaches the individual by attending to the complex energetic process through which an individual comes into being as a transient state, subject to further phases of individuation. Simondon insists that we must understand the individual by grasping its genesis "in the unfolding of its reality and to *know the individual through individuation rather than individuation starting from the individual"* (2020: 3, author's emphasis). He seeks to provide a way of knowing the dynamic processes in the taking shape of individuation in all its phases of being. Simondon can be characterised as a radical process thinker who was concerned with the operational relations of becoming rather than the form or structure of the object under interrogation (Letiche and Moriceau, 2016: 1).

All too often the internal operations of a technical object remain an obscure zone or black box, where we are unable to grasp its inner workings. Simondon (2017) provides a mode of thought that can help to gain a "sense" the "dynamic relations between potentials that are literally realised in the technical object and that develop there via inner resonances" (Schmidgen, 2012: 22). The significance of a technical object's operational regime of functioning can be "explored and inferred by reconstructing the history of [the differential relations between potentials] inside the technical object" (2012: 23). Simondon provides a way of gaining a greater appreciation of the individualised mode of existence of the YLS/CMI operations and how this mediates relations in youth justice without relying exclusively on its meaning as a linguistic entity that could be determined by semantics. Furthermore, Simondon (2017: 29-51) dispels any presumption that a technical object is a fixed entity as it remains open to an ongoing process of individualisation. He defines this an ongoing process of technical individualisation which is detailed later in the chapter. At any stage in a technical object's evolution, it has the capacity to mediate human relations to actualise a convergence of relations consistent with its internal operational schema and its associated milieu. This stabilises relations within it associated

operational milieu establishing homeostatic relations which nonetheless remain open to change.

Fisch (2018: 30) summarises Simondon's philosophy of technology as asking two broad and inter-related questions. Firstly, "How do technical objects 'take-form through the work of human invention in conjunction with the conflicts and relationships specific to its milieu?". Secondly, "To what extent [is a technical object] […] able to vary in accordance with information received from its operating environment?" The bulk of this chapter outlines the way in which Simondon (2017) has provided an answer to these questions to make sense of a technical object's mode of being. In the genesis of a technical object there is a "genesis of an entire lineage through which a 'technical essence' gradually evolves" (Lindberg, 2019: 304). A particular kind of technical object exists as a phylogenetic line "that deploy[s] a kind of history that starts by invention, not of a thing, but of a technical function, and not as a definite solution, but as a possible response to a problem".

The bulk of the chapter considers these two questions outlining Simondon's account of the genesis of a technical object and its abstract schema of functioning, the individualising process of concretisation, the relations between a technical object and its associated milieu, the concept of technicity and the mentality that drives it, and the role of information in technical individualisation. In addition, Simondon's account of how incompatibilities between culture and technics could be reconciled is briefly outlined. This provides insights into how alternate values and norms from the social field could be incorporated into the internal operations of technical objects and the networked ensembles in which they exist to reconcile competing values and norms at a new level of transindividual co-relation. The final section of the chapter outlines Simondon's conception of metastability and becoming in an individuating system, the idea of the transductive operation and how it can be used to understand individuation, and the transindividual relations of psychic and collective individuation.

1.2 SIMONDON'S PHILOSOPHY OF TECHNOLOGY

Simondon (2017: 15) begins his account of technical objects by stating that he intends to "raise awareness of technical objects". In this first sentence of the Mode of Existence of Technical Objects (MEOT), he declares that technical objects are depositories of sense or meaning. Despite the ubiquity of technological apparatuses in culture and society, he considered that culture had demarcated itself from technical reality as if technology was a "strange or foreign being" (2017).[1] The most common expression of this demarcation is the opposition between humans and technical objects evident in two seemingly contradictory attitudes. On the one hand, technical objects are reduced to the status of a simple device or an assemblage or matter "that are constantly used but granted neither significance or sense" (Schmidgen, 2012: 19). On the other

hand, they are envisaged as being either a threat to humans in incantations like the robot or a source of great admiration fuelled by a fascination with technological utopias such as perfect automata (Simondon, 2017: 17).

A core aim of Simondon's philosophy of technical being was to demonstrate that culture ignores "a human reality" within technical objects, arguing that that "culture must incorporate technical beings" into its forms of knowledge and sense of values (2017: 15). The world of culture is understood as a world of meaning, while the world of technical being is considered too exclusively in terms of utility (Combes, 2013: 58). Simondon was the first to explicitly declare that technical reality was "one of the fundamental modes of being in the world, commensurate with religion, art and philosophy" (Viana, 2015: 34). He sought to incorporate technical reality into the concept of culture, alongside science and the humanities. Simondon claims that "only a philosophical manner of thinking can take on the task of rendering culture and technics compatible" (Combes, 2013: 58). By incorporating the concrete modes of technical existence into thought and collective action it would be possible to establish a relation with technical objects that was not alienating or enslaving for humans as well as for technical objects.

Simondon advances the concept of "technical culture" to name a way of thinking to resolve the conflict between culture and technology, to render culture and technics compatible (Combes, 2013: 57). The concept of a technical culture supposes that the relations between culture and technics can be brought into a mutual relation to "grasp the limits of complex domains of reality" that are not exclusively reducible to culture or technics, and that require a perceptual orientation that passes between these two domains of operation to bring about a vital development (Simondon, 2015: 23). Simondon hopes that a knowledge of technical realities "grasped in their signification" and an appreciation of "an open plurality of techniques" can be introduced into culture, to raise awareness of the mutual relations between culture and technology and of the "values implied by these relations", widening the possibilities for change (2017: 19, 21). The introduction of technical being into culture opens the possibilities for becoming "a foundation for culture […] making culture adequate to the reality which it expresses and regulates".

So how can philosophical thought undertake the task of better understanding the significance of technical objects? As briefly outlined in the Introduction, Simondon's philosophy of technology is an inquiry into the operations of individuation that bring a technical object into being, an ontogenesis of technical being and its evolutionary stages (Fox, 2015: 97). Analysis begins by following the genesis of a technical object to grasp its individuality that is intelligible in terms of its abstract schema of functioning. There are a multitude of different species of technical objects, thus requiring an analysis of technical objects in terms of their specificity in their genesis. My analysis presupposes that there are different kinds of actuarial risk assessment

instruments and that each of these has its own genesis and line of technical individualisation.[2] There is a multiplicity of technical objects that have similar technical structures but different functions when their internal operations are examined more carefully (Blom, 2017: 20). Technical objects may resemble one another when examined from the outside making it difficult to define their species or individuality.

This task is insufficient alone as it is necessary to continue following the technical object's evolution over time. A technical object does not necessarily retain its original fixed schema (which is underdetermined and partial in its functioning), as these operational schemas and their mode of functioning are modified and transformed becoming necessarily engaged in temporal evolution. In following the ongoing technical individualisation of a technical object analysis focuses on the intelligibility of a technical object's internal operational schema and how its different elements are organised to function in a convergent way where "each element fulfills not only a function in the (whole) ensemble but a function of the whole" (Simondon, 2017: xv). The evolution of the technical object is understood as an ongoing process of concretisation that moves from the abstract to the concrete at improved levels of multi-functionality defined by a "tendency towards ever more concrete solidarity of elements assembled into systems that function" in synchrony with one another (Combes, 2013: 58). It is insufficient to only consider the technical object from its utilitarian intention "that is essentially exterior to it", but rather in terms of the "fabricational intention" that determines the functional technical schema that drives its internal mode of operation and the relations this establishes in the milieu in which it operates.

1.2.1 THE GENESIS OF THE TECHNICAL OBJECT

Simondon (2017: 27) suggests that it is difficult to define the genesis of each technical object as its "individuality […] is modified throughout the course of [its] genesis". If we define a technical object's individuality by its usage (e.g., it is an instrument that predicts re-offending to incapacitate high-risk offenders or to reduce the crime rate) this obscures the differences between these instruments in terms their internal operational schemas and regimes of functioning as well how they may vary over time "by changing their individuality". Simondon (2017: 26) attributes the unity or individuality of a technical object and its specificity as being defined by the "characteristics of consistency and convergence in its genesis". He claims that "in a phylogenetic lineage, a definite stage of evolution contains dynamic structures and schemas within itself that partake in the principal stages of an evolution of forms". These internal operational domains and their invented interoperability of functioning are at the core of technical objects and make up their "essence" (2017: 46).

1.2.1.1 THE ABSOLUTE ORIGIN OF A TECHNICAL LINEAGE

The "essence" of the technical object refers to its abstract technical schema of functioning "grasped in its ideal function" that is "transposable to other structures" (Simondon, 2017: 45). The technical object is a "being that functions" according to its internal technical schema (2017: 151). This individuality becomes more recognisable as it "remains stable across the evolving lineage" as well as having the capacity to generate new structures through progressive concretization of its functioning (2017: 46). A technical object's essence is not its utilitarian function but rather the functional technical schema that operationalises a technical problem that needs to be resolved (e.g., how to promote community safety while trying to rehabilitate offenders). The act of invention requires a technical imagination capable of selecting potential elements, forms and schemas of operation that confront or conflict with one another and identify a solution in relation to an existing problem in the milieu that can organise these different elements into a functional whole (2017: 60-61). As Voss (2019: 10) describes it, the inventor(s) must select pre-existing technical objects from which they can extract elements or schemas of functioning as suitable operational domains that can be configured in such a way that there is a functional recurrent causality between these different domains. There is a need for a "'vision' that represents a state that does not yet exist and in which the problem is solved" (2019: 10).

An abstract technical object possesses a fecundity as its full potential has not yet been reached. Simondon (2017: xv) characterises it in this way: the technical object's regime of functionality remains only partially realised, lacking a complete reciprocal causality between its sub-domains, and lacking "internal resonance". It is still affected with a certain degree of imperfection that limits its scientific status as it remains difficult to precisely identify all its effects. He describes it as "a non-saturated system" that provides the impetus for changing its structure, of evolving by "generating a family" of instruments that belong to the same phylogenetic lineage (2017: 46). In successive concretisations the inventor consciously endows each functional sub-ensemble with characteristics that correspond to all the components of the technical object's overall regime of functioning, often by subtracting elements and restructuring relations to resolve tensions in its internal operations to realise a higher degree of convergence of functions (2017: 28). At each successive stage of concretisation, a technical object's technical essence remains stable even though components of its functional schema have been restructured (2017: 48).

1.2.2 CONCRETISATION: THE CONDITIONS FOR TECHNICAL INDIVIDUALISATION

Simondon (2017: 27) considers the abstract technical schema of a technical object as being a closed system. For it to realise its potential more effectively it needs to become better integrated "into an ensemble" given "problems of compatibility between already given ensembles".

Concretisation is an ongoing inventive operative process that occurs over a progressive series of "structural reforms that facilitate the technical object's self-specification" (2017: 32). To improve the technical object's functioning, a technical mentality is used that concentrates on the abstract work of the organisation of a technical object's internal sub-systems given incompatibilities in their relations that impede the technical object's overall regime of functioning:

> It is due to these relations, given certain limits of the conditions of utilisation that the technical object encounters obstacles within its own operation: *the play of limits whose overcoming constitutes progress, resides in the incompatibilities that arise from the progressive saturation of the system of sub-ensembles;* yet because of its very nature this overcoming can occur only as a leap, as a modification of the internal distribution of functions, a rearrangement of their system; what was once an obstacle must become the means of realisation. (2017: 32, author's emphasis)

The individualising process of concretisation involves the "discovery of functional synergies" that characterises progress in the evolution of the technical object (2017: 40). Simondon affirms that the "individualisation of technical beings is the condition of technical progress" (2017: 59). He doesn't describe technical individualisation in terms of technical development where one might provide a chronological presentation and juxtaposition of technical inventions, preferring to use the term technical evolution, as though it were a natural process (Voss, 2019: 6). Simondon (2007: 29-30) contends that pre-industrial technical objects operated by adapting to the external milieu and the operator, where the adaptive function became more and more refined. This contrast with industrial and post-industrial technical objects where their evolution is linked to the restructuring of the "structural and functional auto-correlation of the object's elements […] which instead of fulfilling only one function frequently combine several" (Voss, 2019: 8; Simondon, 2017: 35-38). Concretisation operates by organising functional sub-ensembles within the technical object's total regime of functioning by redistributing functions within a network of different structures where each structure fulfills several functions within the integrated technical ensemble as a synergetic group of functions.

Simondon (2017: 57) provides the example of concretisation using the invention of a water turbine by Jean Guimbal that was used in French tidal power schemes which miniaturised the turbine's key components and solved the problem of over-heating. This invention organised the turbine's operational components to establish, what he describes as a "plurifunctionality" between the turbine, its generator contained in a crankcase filled with pressurised oil, the water that is pumped through it and the energetic cooling of the water using both the oil and water. In my research the actuarial risk instrument I examine has a multi-functionality in its regime of

functioning between its internal operating domains of risk classification, risk profiling, case management, the reassessment of risk and the readjustment of preventive action. Simondon (2017: 39) describes concretisation as an inventive technical solution where "all of the functions fulfilled by the structure are positive, essential, and integrated into the functioning of the whole" and where the marginal consequences of functioning are "eliminated or attenuated […] by corrective measures". He distinguishes two ways about how a technical object can be improved. There are "major" modifications described where concretisation occurs because of "essential, discontinuous improvements" that increase the synergy of functioning between its operational domains; and there are "minor" improvements that do not modify the internal schema of the technical object but, rather "diminish the nocuous consequences of residual antagonisms" (2017: 42-43).

Concretisation continues the original act of invention by both maintaining a relation to the technical object's abstract technical schema and by seeking to modify its internal operations in a discontinuous way. Simondon (2017: 57) describes concretisation as an invention that "presupposes the problem to be solved" whereby it is because of the "new conditions created by concretisation" that a new regime of functioning can be actualised at a new threshold of individualisation. Rather than being conditioned by the already given milieu in which the technical object operates, concretisation is an invention that conditions the birth of a milieu which it requires to be viable (2017: 58-59). Simondon links invention "to an action of the future on the present" whereby a modified technical schema establishes a recurrent causality between its differential operational components (Massumi, 2012: 24). In the example of the Guimbal turbine there are two sets of multifunctional potentials involving the water and the oil, which when coupled into an individualised continuous technical ensemble cross a threshold, "like a quantum leap to a qualitatively new plane of operation" (2012: 25). Prior to this, there were two discontinuous energetic fields separated by differentials including temperature, pressure, viscosity, and the pattern of movement. Simondon characterises this as a state of disparity that concretisation resolves by establishing an emergent continuity between conflicting potentials, "the circling into each other of the multifunctionalities of the energetic fields" (2012: 25). As Massumi explains it, the differentials between the two fields still exist, but something else has "leapt into existence" on another plane of operation as a continuous and self-maintaining technical system capable of moving across the differences in the two differential fields.

1.2.2.1 THE TECHNICAL OBJECT AND ITS ASSOCIATED MILIEU

In his account of concretisation Simondon (2017: 58) contends that "a concretising invention realises a techno-geographical milieu […] which is a condition of possibility of the technical object's functioning". In other words, a technical object is invented "according to the milieu in which it must be integrated" if it is to be viable (2017: 227). If a technical object's operational

schema is to take effect, it must establish a meeting point between the technical and geographical milieus to integrate relations within a functional and convergent regime of operation (2017: 55). Otherwise, the two milieus do not belong to the same system and are not necessarily compatible. In this way Simondon introduces the concept of a technical object's relational "associated milieu":

> Like an arch that is stable only once it is finished, [the technical individual] fulfills a function of relation [that] maintains itself and is coherent once it exists and because it exists; it creates its own associated milieu from itself and is really individualised in it. (2017: 59)

The technical object-associated milieu coupling establishes a convergent co-relation where two differential potentials operate at a threshold of functioning that is more synergistic and self-maintaining. The schema of concretisation establishes an "operative solidarity of the coupled multifunctionalities of the formerly disparate energetic field" (Massumi, 2012: 28). At this meeting point there is a "taking-effect of a new order of relations of matter" that re-energises matter across a diversity of elements and the disparity of their fields. In the case of an actuarial risk instrument the youth justice authority who conducts a risk assessment is modulated by the instrument's informational risk codes where the instrument relates directly to matter concerned with a discrete assemblage of relational domains of risk locatable in the associated milieu "so that the human senses the world" through the instrument (Viana, 2015: 37). The diverse and differential flows of information begin to become individualised, sharing the same code which is interchangeable (2015: 39). Information about elements of a young person's life is converted into a risk calculation, thus concretising that sub-domain in the instrument's internal schema concerned with risk classification. This elementary moment is an operative component of technical individualisation that enters an energetic relation with the other operational domains of the instrument where all these operational domains establish a recurrent causality in their operative solidarity. As an ensemble of correlating relations, a technical object is embedded in its techno-geographical milieu where there is a dynamic exchange of information (Lindberg, 2019: 303).

In his exegesis of Simondon's process of concretisation Massumi insists that the associated milieu should not be interpreted as a spatial concept, simplistically described as the environment. Instead, the associated milieu is a "'regime' of energy transfer between the technical object and its operational milieu, *across* the boundary by virtue of which the technical object takes on the autonomy of self-conditioning operative solidarity" (2012: 28). Simondon (2017: 61) characterises the constitutive relation between the each of the operative structures of the technical object and the dynamisms of the associated milieu as possessing a co-

determining and active relation that actualises the potential concretised in the technical object's operational schema. There is a recurrence of causality across all the object's sub-operational domains (its elements or sub-ensembles) and the associated milieu, that "in turn determines them altogether by providing the energetic […] conditions of functioning".

To help clarify the terms used by Simondon in his account of technical individualisation I provide an example of a piano that was used by Lindberg (2019: 305-306) to explain the different relations between a technical element, a technical individual, and a technical ensemble. A piano is a technical individual that has an associated milieu such as a concert hall. Simondon (2017: 63) defines a technical individual as follows: "we shall speak of a technical individual whenever the associated milieu exists as a condition of functioning *sine qua non*, whereas it is an ensemble in the contrary case". (Simondon's example is that of the Guimbal turbine.) The piano is invented out of the available elements that "carry the technicity of an epoch (hammers and stings)" (Lindeberg, 2019: 306). The technical individual's internal structures are connected to a single milieu where there is a synergistic relation whereby fluctuations in one element promote the functioning of another element (Simondon, 2017: 65; Mitchell, 2012: 75).

A technical element is only a part of the piano, like the hammer of a piano. It does not have its own associated milieu, and this explains "why it can be detached from the individual and eventually incorporated into a different technical individual (hence discontinuities of technical evolution)" (Lindberg, 2019: 305). "Technical elements have "a transductive property that makes them the true bearers of technicity" as they have the capacity to detached from any technical individual and be transported and transmitted and "go on to make new individuals" (Simondon, 2017: 74). The transduction of elements makes technical evolution possible by creating new configurations of heterogenous relations in a new phase of technical individualisation that integrates disparate elements into a functional and unified whole.

A technical ensemble does not have one associated milieu, it is "a set of machines that operate together thanks to human co-ordination" (Lindberg, 2019: 306). The ensemble has distinct parts that cannot be stabilised by the same associated milieu. Even though each of the operational sub-domains are separated from one another, they are organised to function with the "same level of relative individualisation" to establish a recurrent causality between these operational domains and the associated milieu (Simondon, 2017: 64-65). A technical ensemble functions by sealing off its separate elements from one another "to prevent unexpected changes in one element from impeding the function of other elements" (Mitchell, 2012: 75; Simondon, 2017: 65, 67). This assists in maximising the convergence of functions and energetic potential of the technical ensemble's regime of functioning. A technical individual and a technical ensemble both

amplify relations in greater alignment their concretised technical schema, establishing a provisional state of homeostasis that limits variation within their operational regime.

1.3 TECHNICITY AND THE EVOLUTION OF TECHICAL OBJECTS

Up until now I have presented a conception of technical individualisation whereby the essence of a technical object and its tendency toward concretisation is truly technical. As Combes (2013: 58) reiterates the technicity of a technical object "does not dwell in a rationality overseeing it, or a regime of utility it would merely embody". Simondon (2017: 72) understands technicity as "the degree of [a technical object's] concretisation", its metastable degrees of interoperable multi-functionality across its different domains of operation. To resolve incompatibilities or limitations in a technical object's regime of functioning, human invention is attuned to the positivity of its internal relational elements and how these elements could be modified to improve its overall operational schema at a new functional threshold (2017: 73). This presupposes an "intuitive knowledge of the element's technicity" (2017: 74), which makes it possible to discover new ways of combining different elements to achieve a new operative "convergence of functions into a structural unit" (2017: 28). All technical objects harbour a degree of indeterminacy which can be localised in "this or that element in relation to all others". Concretisation is linked to technicities that can be understood:

> As stable behaviours, expressing the characteristics of the elements, rather than simple qualities: they are powers […] which is to say capacities for undergoing an effect in a determinate manner. (2017: 75)

While some elements may be considered as being detachable because they are inessential to the overall functioning of the object, others may be found to possess a high degree of technicity capable of reducing the technical object's margin of indeterminacy. Simondon contends that the higher its technicity the greater its stability and the wider its conditions of deployment. In the modification of the elements of the technical object's prior schema of function this enables "technical causality to rise from the level of the element to that of [the technical individual], then from the level of the individual to the level of the ensemble" (2017: 67).

1.3.1 SIMONDON'S CONCEPTION OF TECHNICAL MENTALITY

In 2012 an unpublished text written by Simondon was included in the first edited book written in English entirely devoted to his work. The paper titled "technical mentality", synthesises Simondon's conception of technicity, where he argued that (in the early 1960s)[3] a new technical mentality was emerging that he connected with post-industrial information networks (Simondon, 2012: 1, 9). In Simondon's conception this mentality encompasses cognitive

schemas, affective modalities, and voluntary norms of action. As a cognitive schema he considered that this mentality was "coherent, positive and productive" but that it was underdeveloped in terms of its constitutive affective relations and its norms of action. Bardin and Carrozzinni (2016: 3) characterise his articulation of this mentality as an attempt to "make explicit the regulatory potentiality of technics" which would help resolve the incompatibilities between technology and culture. Simondon (2012: 1) defines technical mentality as offering a mode of knowledge founded on "the discovery of common modes of functioning – or of regime of operation – in otherwise different orders of reality that are chosen just as well from the living or inert as from the human or the non-human". Technical mentality works as a mediator between technicity and culture "in the process of constituting […] 'technical culture'" to realise new ethical values and norms that can spread through the social system (Bardin and Carrozzini, 2016: 4, 5). This mentality expresses a collective dimension where its cognitive schemas, affective lines of energetic and informational movement, and values and norms have the potential to co-individuate at the transindividual level.

Simondon (2012: 3-4) proposes two inter-related postulates about the cognitive schemas of this mentality that are consistent with his conceptualisation of technicity in *MEOT*. There is a focus on technical objects as intrinsically needing control, repair, and maintenance "through testing and modification, or, if necessary, a complete change of one or several of the subsets that compose it" (2012: 4). In this sense technical invention tries to find a solution to concrete problems given tensions and demands associated with a state of metastable disequilibria in the technical object's internal operations and its relations with its milieu. The first postulate identifies a mode of prehension that carefully examines the subsets of the technical object that impact on its relative effectiveness to its overall functioning where some elements as are considered as being detachable from the whole of which they are a part.[4] Simondon contends:

> A truly technical attitude would be more refined than the easy fundamentalism of a moral judgement and of justice.[5] The distinction of the subsets and of the modes of their relative solidarity would […] be the first mental work that is taught by the cognitive content of the technical mentality". (2012: 4)

His second postulate asserts that if we are to understand a technical being "completely" it is necessary to understand the operations of concretisation that bring into being threshold events that modify a technical object's regime of functioning over time. Schemas of functioning are oriented to a mode of technical activity that concentrates on successive "threshold problem[s] to be resolved" (2012: 4). Concretisation perpetuates invention by "anticipat[ing] the existence, within different orders of reality, of certain effects […] that for their existence require determinate thresholds to be crossed" (2012: 5)." To the extent that concretisation "does not

exhaust itself in its utility as means", it can incorporate disparities in techno-social relations to operate as "a phase in the relational activity" between technology and humans that modifies the sociocultural milieu, establishing new values and new fields of action (2015: 19).[6]

The elements that have been incorporated into a technical object's existing structure remain decomposable and can be recomposed to give rise to a transformation in a technical object's functional "'operational solidarity' […to establish] an effective continuity" across its differential operational domains (Massumi, 2012: 26).[7] The restructuring of the elements is not considered using a linear or additive logic as if they were positive building blocks. Instead, a transductive logic is used involving an operation whereby a technical process repeats a previous process "with a […] difference, thanks to which the eruption of the new becomes possible" (Lindberg, 2019: 307). Incompatibilities or disparities in the existing dynamism of the elements of a technical object's operational structure are transformed by a transductive process where "an activity continues itself in its immediate vicinity by working and organising neighbouring regions and by creating…new individuals that are similarly provisional unities of heterogenous elements". Transduction is an individuation in process that binds together disparate elements and relations into a new structure in an imaginative way. Transductive operations establish an interactive communication between incompatibilities in elements of a technical object's operations to discover a relation of compatibility (Deseriis, 2018: 5). The logic of transduction does not attempt to master a situation in the way that an engineer or technocrat would attempt to logically find a solution, typically by thinking in terms of "sets (ensembles)" rather than in terms of "individual operational units" (Simondon, 2017: 142).

Simondon (2012: 12-13) considers that this technical mentality is embodied in the ongoing technical individualisation of post-industrial technical objects. He characterises them as having two layers of reality, "a layer that is stable and permanent as possible, which adheres to the user and is made to last, and a layer that can perpetually replaced, changed, renewed because it is made up of elements that are all similar, impersonal, mass-produced by industry and distributed by all the networks of exchange" (2012: 13). The post-industrial object is open-ended and can be optimised according to metastable thresholds of functioning. Its continuation is made possible by the structures that cognitive schemas provide that enable thresholds of functioning to be known, measured, and normalised to differentiate the "relation between the permanent parts and the parts subject to replacement". At the same time this implies the establishment of norms of action that support this continuous line of technical activity and a "firm [affective] orientation of a voluntary push towards the development of technical networks".

In the industrial mode of production, the standardisation of a technical object's sub-components established the possibility for the creation of networks (2012: 9). When a network is established

(e.g., the introduction of aerials in the Eiffel Tower that interconnects with pylons, masts and stations across Europe), the industrial mode of operation "takes leave from the industrial centre" extending its networks into the world. This heralds a technical mentality where operative relations and norms of action can establish:

> […] a thought-network, into the material and conceptual synthesis of particularity and concentration, individuality and collectivity – because the entire network is available in each of its points, and mazes are woven together with those of the world, in the concrete and the particular. (2012: 9)

Simondon regards networks as the highest level of concretisation, "the point in which 'the world becomes technicised'" (Simondon, 2005: 86, cited in Viana, 2015: 35). He contends that an industrial mode of production – indeed, any technocratic schema of functioning – is too specialised and single-minded in its operations and values, being too removed from the social field and incapable of elaborating a valuation that incorporates alternate values and norms. He argues that information networks have the capacity to integrate energy and information that were separated in the industrial phase and "recover a continuous level of operation" (2012: 13).[8] Information networks distribute energy to modulate usage because of the differential circuits of information (Simondon, 2012: 9-10). Simondon envisaged that the emerging technical mentality that he associates with post-industrial networks as having the normative power to establish a new technical ethics (Bardin and Carrozzini (2016: 5). He defines this by the single ethical criterion of "the opening", a technical value that operates within an "economy of metastable functioning" that could integrate technical cognitive schemas, informational techno-cultural networks, and norms of action (Simondon, 2012: 13; Bardin and Carrozinni, 2016: 1). If technical reality remains open, its "processes of concretisation can be continued […] founded on an open and modifiable normative regime" (2016: 5).

Simondon's technical ethics invokes the discovery of technical schemas capable of mediating relations "between technical objects and the natural world" that allow for the "integration of technics into the world that goes beyond empiricism" (2017: 227). He situates technics within "technical realities themselves" where relations "take on a network structure" as a specific technical object's schema of functioning is put into relation with other technical and cultural schemas of functioning. The network is composed of "key-points" that are in the natural, technical, and human world which he describes as having a networked reticular structure that becomes social and political (2017: 228). The technical mentality he envisages would facilitate the discovery of new transindividual values and norms that could be applied to a "common ethics of the relation between human beings" (2012: 11). He contends: "technical networks take on a more normative power as the internal resonance of human activity throughout technical

realities become greater" (2017: 229). Technical realities tend to converge into networks which brings the world, humans, and technology into greater proximity, "while the internal flow of information [across the network] becomes more cohesive" (Viana, 2015: 36). Moreover, once the network becomes ubiquitous, "all action is embedded within this mediation" whereby "the system's internal regulation is the fruit of one or several centres".

1.4 THE ROLE OF INFORMATION IN TECHNICAL INDIVIDUALISATION

In this section I look more closely at Simondon's conception of the role of information in the operations of technical individualisation. A technical object's capacity to evolve resides in its margin of indeterminacy, its sensitivity to outside information (Simondon, 2017: 17). It is possible to critically evaluate to what extent any individualised technical object is an open machine that uses differentiating informational significations for the recoding of its operations to reduce its margin of indeterminacy to progress to a new stage of technical individualisation.

Simondon (2017, 2020) reinterpreted cybernetic theories of information and technology, viewing technical objects as transducers of information capable of both sending and receiving information. This contrasts with the cybernetic view that machines are producers or consumers of information (Mackenzie, 2002: 24 *fn*3). A transducer mediates between two domains that are of different orders of magnitude to establish a more synchronous structuration of relations that amplifies relations and effects (e.g., between differential potentials and their actualisation, between the technical object and the milieu in which it operates, between form and matter) (Simondon, 2017: 155). In Simondon's conception it is "a margin of indeterminacy between the two domains, that […] brings potential energy to its actualisation" and "makes calculation possible" (2017: 155, 154). In his account of this passage from potential to actualisation, "information is the condition of actualisation". All technical objects are transducers that have a regulative function but that retain a certain degree of indeterminacy; humans are mediators of technical objects who modify their mode of operation to solve problems in its functioning where "information is that which adds determinacy" (2017: 156).

For a process of transduction to occur there must be some disparity, tension, or conflict within a domain because of differential relations and potentials (Mackenzie, 2002: 25 *fn*3). Transduction mediates this disparity through a process of modulation to bring about a partial and momentary resolution. Information "loses the sense conferred on it by the technology of transmission (which thinks of it as what circulates between an emitter and receiver) to designate the very operation of taking on form, the irreversible direction in which individuation operates" (Combes, 2013: 5). In the case of technical objects, information "literally in-forms a machine, or imparts a form to it", thus providing it with the capacity to transductively structure the domains

in which it operates (Mackenzie, 2002: 25 *fn*3). Simondon does not consider information as being content, structure, or meaning: “it is nothing but a disparity. Its meaning is the coming into existence of a new level that effectively takes off from the disparity and resolves the discontinuity it exhibits into a continuity of operation” (Massumi, 2012: 32).

Simondon’s conception of information is unique in that he views it as operating in a state of metastability (Iliadis, 2013: 10). While the cybernetic conception of information is formulated in terms of its probabilistic transmissibility between a sender and a receiver, Simondon understands information within a dual-dimensional relation where “one type of information interacts with another in an event that produces a fundamental change in ontology” (2013: 11). Given the disparation between differing dimensions of reality, information denotes a transductive operational process in which these differential realities begin to communicate with one another to resolve a state of disparation and establish a system of information. Simondon elaborates:

> The notion of form must be replaced with that of information, which supposes the existence of a system in a state of metastable equilibrium that can individuate; unlike form, information is never a single term but the signification that emerges from a disparation. (2020: 16)

The principle of individuation based on form (conceived in terms of identity and structure) is replaced with information as the principle of individuation. Form and matter are understood as a system in tension, as “operators in a process rather than the final terms of an operation” (Combes, 2013: 5). Information modulates form and matter to resolve a disparity (Simondon, 2017: 153). In the cybernetic technological paradigm, the codes of the sender and receiver must coincide to enable a consistent exchange of information independently of the code that has been engineered into the system’s structure. Simondon understands the code of a system as “both the producer-of and produced-by information exchange, i.e. it can generate and be modified by signals” (Bardin, 2015: 26). Information exchange continuously modifies differential relations between the operating domains of the system and its relationship with its exterior milieu or other systems. Simondon does not regard a signal as information unless it has the capacity to modify a system or one or more of its sub-domains of operation (Bardin, 2015: 27). Information is defined in an abstract way as “what produces the interruption in the continuity of the communication process, a crisis in the self-regulatory functioning of systems, and can trigger, after all, the structural reconfiguration of the system”.

Massumi (2012) characterises information in terms of its energetic operations. Information is an event that “effectively takes off from the disparity and resolves the discontinuity it exhibits into a continuity of operation” yielding a new quantum of effect (2012: 32). A quantum leap

discharges energy while also passing a threshold to “a qualitatively new level of existence”. In contrast to cybernetics, this differentiating process is not understood in quantitative terms but in a more abstract way where definite information is replaced by the concept of “pure information” and its relations with a metastable system’s internal resonance, potential energy, and orders of magnitude (Simondon, 2017: 252-253). In the process of concretisation human mediators “interpret a given functioning [of a technical object] in terms of information” as a signifying event that reinvents its operational schema at a new threshold of functioning (2017: 150). This provides a provisional solution that establishes a new homeostatic regime of functioning; however, the technical system remains in an energetic state of “metastable equilibrium”. In this conception information is continually giving rise to “new operational solidarities that did not exist before” (Massumi, 2012: 32). Massumi (2012: 33) considers that Simondon’s conception of information regards quantification as “always labouring under a deficit of potential” because of its determinate operational schemas, while efforts to formalise a system’s equilibrium are at the cost of closing the energetic potential for further transformation (see Simondon, 2020: 5)

In a critical phase of concretisation, the technical object receives information to “temporarily [localise] its indeterminacy at instants that are sensitive and rich with possibilities” (Simondon, 2017: 153). The signification of information does not result in an abrupt reversal of the operations of the technical object; instead, there is a relaxation in its operations so that it can “reincarnate itself” by modifying elements that have been found to be redundant or that raise the technicity of the overall structure of operations (Simondon, 2017: 68). At a critical threshold information momentarily suspends its relation to the present along a delocalising vector and receives information along a localising vector to establish a new stage of individualisation “without becoming an entirely different entity” (Mackenzie, 2002: 19, 26 *fn*3). The mode of existence of a technical object is genetic, involving “delocalising and localising vectors” moving between “unstable events and [emerging] […] structures” that momentarily stabilise relations (2002: 19). In the transduction of information, a technical object emits and receives information (Simondon, 2017: 153) making it possible to distinguish between open and closed machines. To the extent that information regulates a technical object by localising operations and functions “at critical periods and […] critical points […] on the basis of which the energetic channels of the machine can be modified [thus] changing characteristics”, it is an open machine as it can be “modified by information coming from the outside” (2017: 154).

1.5 BEING-WITH-MACHINES: TRANSINDIVIDUAL RELATIONS

> Far from being the supervisor of a squad of slaves, man is the permanent organiser of a society of technical objects which need him as much as musicians in an orchestra need the conductor. The conductor can only direct the musicians because, he plays the piece the same way they do, as intensely as they do; he tempers or hurries them, but is also tempered or hurried by them; in fact, it is through the conductor that the members of the orchestra temper or hurry one another, he is the moving and current form of the group as it exists for each of them; he is the mutual interpreter of all of them in relation to one another. Man [sic] thus has the function of being the permanent coordinator and inventor of the machines that surround him. He is *among* the machines that operate with him. (Simondon, 2017: 17-18, author's emphasis)

In this quote Simondon is affirming that there is a human reality inside the internal operations of technical objects – "human gesture fixed and crystallised into work structures" – and that technical objects possess a great range of possibilities for re-coding their operations by reducing their margin of indeterminacy. At the same time, he signals a relation where the human mediators of technical objects operate on the same level as the mode of existence of technical objects (see 2017: 18-19, 150, 157, 159-160, 235).[9] Simondon provocatively inverts the cultural criticism that humans are slaves to machines, by claiming that machines are slaves to humans (see Schmidgen, 2012: 21-22). This appears early in *MEOT* as Simondon's first step in integrating technical objects into culture (which he elaborates on in the last chapter and conclusion). Schmidgen (2012: 27) characterises this passage as invoking an image of a democratic orchestra to outline a "genuinely cultural task [that is] not just a matter for economists or engineers". Simondon argues that there is a need for "technologists" who can raise "an awareness of the nature of machines, of their mutual relations and of their relations with [humans], and of the values implied in these relations" (2017: 19).

Simondon (2017: 159) proposes that by acting as a mediator of the reality of technical ensembles humans possess an independence "in which [they] can acquire a cultural vision of technical realities". It is possible for those who feel they have a sense of responsibility towards these technical realities to develop a sort of "technical wisdom" that necessitates a certain level of disengagement from the immediate and exclusive relationship with a particular technical object. It is in this sense that he refers to the technical ensemble to reinforce that those who take up this role are located amongst an ensemble of machines that enhances their capacity of interpreting the relations that exist between a reticular network of technical objects and apparatuses. This relation is not understood in terms of technological instrumentality (as a technophobic humanist or a technophilic technocrat might view these relations) but an

invitation to advance knowledge about what these technical realities are “in themselves” as a necessary first step in critical reflection about what this might imply (Lindberg, 2019: 300). Simondon has variously described this role as a technologist, a psychologist of machines, a sociologist of machines, a mechanologist, and as an information technician. In Schmidgin’s (2012: 29-30) reading this entails a double task. First, there is a need to draw attention to the materiality of technical objects and ensembles to promote awareness of their cultural significance and the values this implies. The second task entails “the normative criticism of technical objects” and confronting the regulatory issues this entails.

An understanding of technics is only of value, politically and socially, when it becomes possible to enter the “transitional zone between culture and technology” (Schmidgen, 2012: 25). Simondon uses the concept of regulation to establish this mediation. Culture establishes regulatory communication amongst those who share culture by providing norms and values (2017: 19). An appreciation of the way in which a technical reality produces regulatory values and norms opens the possibility of “introducing the technical being into culture” (2017: 21). Simondon contends that “technicity tends to reside in ensembles” and can become a foundation for culture by mediating technical and social values and norms to generate emergent values and norms of conduct. He considers that the mediation of values and norms at the level of the ensemble establishes an informational process capable of mediating disparate relations to establish a metastable equilibrium with a far wider scope of application. It is information that provides the basis for an in-depth study of regulations (2017: 141).

If regulation was concentrated at the level of the element the operations used to mediate techno-human relations would be relatively minor and would pose no great conflict to the normative orders of technology or culture (2017: 20-21). At the single-minded level of the technical object (or individual) values and norms risk being captured by a technocratic conquest of the world and the exploitation of energies (2017: 21). Without putting an individuated technical object “into a relation of information”, regulation would be founded on an enslaving mode of power (2017: 141). The integration of a technical object in terms of its relations with the ensemble, incorporates its self-regulation within wider circuits whereby “the whole of the milieu must be taken into account” (2017: 140). It is the recognition that technical objects have a certain degree of open-endedness or “freedom in functioning” that broadens the possibilities for the regulation of human-technical relations. Technical objects can operate in multifunctional ways that localise and provisionally resolve incompatibilities enabling “more flexible couplings with other machines and humans” as well as allowing for technical objects to become parts of “‘coherent ensembles within which they can mutually exchange information” in a more synergistic way (Schmidgen, 2012: 22, 26).

In attempting to pave a way for the transformation of our relation to technology, Simondon is proposing a non-alienating relation that would no longer consist solely of serving (working for) or commanding (managing over) technical objects (Combes, 2013: 70).[10] Simondon (2017: 254) concludes that this cannot be achieved exclusively on the social or inter-individual relational domains, but "at the level of the transindividual collective". He understands technical activity as the "model of the collective relationship" that mediates relations between humans, technical ensembles, and nature (2017: 250). Simondon contends that inter-communication with technical objects "must establish itself at the level of technics through technical activity, not by the values of work or economic criteria" (2017: 257). This would establish a relation that is on the same level of functioning where human labour would operate in synchrony with the essence of the technical operation by reference to its "technical schema of invention and the adjustments and reparations [that] are possible" (2017: 255). Collective relations would become supported by an operational activity in which "human being communicate through what they invent" (2017: 252) where technical life continues the genesis of a technical object within a network of other technical objects to which it is related:

> The technical object taken according to its essence, which is to say the technical object insofar as it has been invented, thought and willed, and taken up […] by a human subject becomes the medium […] and symbol of this relationship, which we would like to name transindividual. The technical object can be read as a carrier of a definite information; if it is only used, employed, and consequently enslaved, then it cannot bring any information any more than a book could be used as a wedge or pedestal. The technical object that is appreciated and known according to its essence, i.e, according to the human act that founded it, penetrated it with functional intelligibility, valorised it according to its internal norms, carries with it pure information (2017: 252)

Simondon evokes a more open-ended ethics which not only helps us to perceive, understand and interact with technical ensembles but that assists us to identify new potentials that can be brought into being within the interstices of the technical, the psychic and the collective and the transindividual operations of individuation that this implies. For Simondon (2017: 237), it is within the perspective of "permanent change within technical and socio-political structures that technical thought and socio-political thought can coincide" and where reciprocal tensions can be resolved.

1.6 SIMONDON'S PHILOSOPHY OF INDIVIDUATION

In the remainder of the chapter, I outline three interconnected ways of thinking used by Simondon to grasp the operations of individuation. Simondon seeks to understand individuation

in terms of its generative operations that bring an individual (technical or otherwise) into being and that continue its individuation. Traditional ontologies of the individual privilege the constituted individual, ignoring the "operation constituting the individual, that is, individuation in progress" (Combes, 2013: 2). In attempting to think about the genesis of physical or biological individuals or psychic and collective reality, Simondon attempts to "grasp ontogenesis in the whole unfolding of its reality and to *know the individual through individuation rather than individuation starting from the individual"* (2020: 3, author's emphasis). He substitutes "individuation" for "the individual", and "the operation of individuation as it is unfolding" as the principle of individuation (Combes, 2013: 2-3). In tracing the genesis of individuals, the focus is on "the becoming of being, precisely because it is being that is individuated" (Combes, 2013: 2). To support his concept of individuation he introduces the concept of "pre-individual reality" to help grasp the individual as a relative reality, or as a "partial and relative resolution that manifests in a system that contains potentials and includes a certain incompatibility with respect to itself" (2020: 3-4). Pre-individual being is being-as-potential, a "reserve of becoming" that exists in being (Combes, 2013: 3). In this sense pre-individual being precedes any individual. Pre-individual being is "in excess of over itself", analogous to a system that is neither stable nor instable, but rather metastable.

1.6.1 METASTABILITY AND BECOMING

Simondon (2020: 5) introduces the notion of a state of metastability to grasp the operation of individuation that corresponds to a being's "capacity to phase-shift with respect to itself, to resolve itself by phase-shifting" (2020: 4). An individual is understood as being "a tense, supersaturated system above the level of unity". As briefly outlined in the Introduction, a metastable system is one where there is a disparation: "the existence of at least two different dimensions, two disparate levels of reality" that are incompatible with one another as there is not any interactive communication between them (Deleuze, 2004: 87). In introducing the concept of a metastable state, Simondon uses ideas from thermodynamics like "that of supercooling or supersaturation involved in the genesis of crystals" to illustrate physical individuation "as a case of the resolution of a metastable system on the basis of a system state" (2020: 5). A physical system enters a metastable state when "the least modification of system parameters (pressure, temperature, etc.) suffices to break its equilibrium" such as in the case of super-cooled water (Combes, 2013: 3).

Pre-individual being "is being in which no phase exists" (Simondon, 2020: 4). Simondon uses the concept of dephasing, which he understands as becoming, to designate the process of individuation in progress or undergoing completion. Dephasing, which indicates a change in the state of a system, is "prior to phases, which stem from it" (Combes, 2013: 4). When a system is

changing state (e.g., when water evaporates or turns to ice) the different dimensions involved in this process and its phases (e.g., liquid and gas or liquid and solid) are brought together in the operation of individuation, becoming "necessarily polyphased". Individuation is a "mode of resolution of an incompatibility [i.e. a state of disparation] that is rich in potentials" (Simondon, 2020: 4). In this dephasing there is a "mediation between two orders of magnitude" that gives birth to the individual and to "a milieu at the same level of being […] as no individual would be able to exist without a milieu that is its compliment" (Simondon, 20220: 4; Combes, 2013: 4).

Simondon (2020: 3) insists that individuation "does not exhaust in a single stroke the potentials of pre-individual reality". Individuals individuate as partial solutions to the "many problems of incompatibility between separate levels of being" (Combes, 2013: 4). Individuation is necessarily an ongoing "discontinuity of phases" (Simondon, 2020: 357-358).[11] In any given instant and place, individuation "harbours several phases of being". There is a plurality in being that is above unity whereby any phase-shift individuates while "other latent and real phases exist". At the same time individuation mediates both the milieu and the individual's relations with that milieu.

1.6.1.1 THE CRYSTALLISATION PROCESS: A CASE OF PHYSICAL INDIVIDUATION

Simondon (2020: 6) considers the genesis of crystals as a paradigmatic case of individuation that can be grasped "*at the limit* of the crystal in its formation" (author's emphasis). As an individuation in progress, a transductive operation is triggered, "starting from a tiny germ", whereby activity "increases and extends following all the directions in its supersaturated mother liquor: each previously constituted molecular layer serves as the structuring basis for the layer in the process of forming" that generates an amplifying reticular structure (2020: 13). Crystallisation can be understood as an "energetic regime of a metastable system" that expresses the molecular and atomic characteristics of a constituting chemical species (2020: 7). The crystal is a resolution that emerges within a metastable system involving a mediation between the pre-individual milieu of the mother liquid and the crystalline seed as they begin to enter "a communication between orders of magnitude" and begin to stabilise at a new dimension of being (2020: 6).

Sauvagnargues (2012a: 11) describes the process of crystallisation as the "taking-form of the individual in its pre-individual [milieu]". The crystalline seed triggers a state of disparation in the pre-individual milieu of the mother liquid which can be understood as an oversaturated solution in metastable equilibrium, rich in potential. In this pairing the seed crystal is the bearer of information that acts as a trigger in the metastable system of the mother liquid whereby a compatibility is established based on the difference between these two elements or disparate reals that results in the formation of the crystal (2012a: 12). A process of transductive structuration progressively results in a complete reconfiguration of the entire field as a process

of amplification (2012a: 13). Sauvagnargues (2012a: 12) describes this individuating process as follows: “The individual-crystal thus emerges as the resolution of a difference of potential, but it emerges as difference not as a mitigating system”. Individuation is not produced between two terms or forms given in advance, but rather emerges because of a transductive tension which produces the signification that discovers “the dimension according to which two disparate reals can become a system” (Simondon, 2020: 11, 16; Sauvagnargues, 2012b: 59).

In Simondon’s account of individuation the existence of a state of disparation is viewed as being an objective problematic that has the status of an ontological category as it represents the state of pre-individual being that comes before individuation (Deleuze, 2004: 88). It is the “axiomatic [that] designates the objective structuration of a problematic field”. For example, in the visual field there is a disparity or incompatibility between the retinal images received by the left and right eyes that is resolved by the production of depth in binocular vision. A new axiomatic is produced “as a condition of coherence” involving three-dimensional vision that the two retinal images do not contain in themselves (Sauvagnargues, 2012a: 6; Simondon, 2020: 229, 248, 391 *fn*44).

In the operation of individuation information is the “discovery in a conflictual situation of a new axiomatic that incorporates and unifies all the elements of [that] situation that contains the individual” (2020: 10). It is the signification that becomes “an organisational dimension in the resolution” of a state of disparation (2020: 11). Information is not reducible to a single and homogenous reality, emerging in the mediation between two different dimensions of reality as these disparate reals begin to communicate with one another (2020: 6). Simondon also refers to this mediation between disparate realities as establishing an “internal resonance of a system undergoing individuation”, a coupling between these different dimensions of being (2020: 374).[12] The resolution of the tension is information, the inventive “signification that will emerge” (2020: 10). Information enables the system to restructure itself at a qualitatively new level of organisation, in a “leap to higher functional [system]” involving a process of amplification (Voss, 2018: 94). The creation a new dimension of being enables an energetic exchange of information between these different dimensions of reality to bring about structural changes in the milieu in which they occur.[13]

In extracting a resolving structure from the different dimensions of a problematic, a transductive operation creates a new dimension of being not contained in the initial problem by inverting the negative into the positive (2020: 15). The differences between the two dimensions of reality are integrated into the system of resolution, becoming “a condition of signification” without effacing the differences between them.[14] Deleuze considers the concept of disparation as being “more profound than the idea of opposition” and the concept of potential energy “more

profound than the idea of a field of forces" (2004: 87). Simondon's account of individuation uses the problematic to replace the negative (2004: 88). It provides a new way of thinking that supersedes the "primacy of contradiction and the resolution of difference by a dialectic that neutralises and absorbs it in identity with the concept (Sauvagnargues, 2012a: 9). For Simondon, there exists a "real disparity" that exists in a state of disparation that maintains the difference between dimensions of reality and where "heterogeneity [is] the constitutive condition for the invention of a solution […that is] made possible by this ineradicable difference" (2012a: 10). The invention of a new dimension of being does not absorb these differences, "but rather gives them a new sense […] an entirely new configuration".

1.6.2 TRANSDUCTION

Simondon's (2020: 12-17) conception of transduction augments his account of metastability and dephasing. It is a mode of analogical thought and a method that traces the dynamic relations and activity of being grasped before any individuation. The transductive operation is "an individuation in progress" triggered by a moment of pre-individual tension, followed by the coupling between different dimensions of reality as they begin to resonate with one another, and the "correlative appearance of dimensions and structures" according to which being phase-shifts (2020: 13-14.) Transduction can be defined as the "operation where a domain undergoes information" that begins in the region in-between two disparate reals as they begin to communicate with one another and spreads into neighbouring regions (Combes, 2013: 6). "By transduction we mean a physical, biological, mental or social operation through which an activity propagates incrementally within a domain by basing this propagation on a structuration of the domain operating from one region to another: each structural region serves as a principle and model as an initiator for constituting the following region, such that a modification thereby extends progressively throughout this structuring operation (Simondon, 2020: 13).

Transduction can be mapped by following its progressive iteration in simple physical domains (as in the case of the crystallisation process) or by tracing an activity that "starts from a being's functional and structural centre and extends in various directions based on its centre" (2020: 13). This latter operation applies to complex domains (including technical-human, psychic problematics, and collective individuation) where operations may advance at a variable pace and extend into a domain of heterogeneity, as a reticular structuring relation involving multiple dimensions begins to spread out from an operational centre. To better grasp a transductive operation, a description of specific cases of individuation in progress is required. Simondon (2020: 14) characterises this as a both a method and a way of knowing: the "mind's way of discovering", first the dimensions according to which a (physical, technical, psychic, collective) objective problematic can be defined, and then "following being in its genesis", thus

“accomplishing the genesis of a thought at the same time as the genesis of the object is accomplished”. A tranductive description makes it possible to understand the “systemic conditions of individuation, internal resonance, and the [particular] problematic” under consideration (2020: 14).

As briefly outlined in the Introduction, Simondon (2020: 667-673) describes this mode of discovery as using the analogical act where two operations are put into relation to grasp how they energise the process of individuation. Analogical thought establishes a relation between two different “essential operations” (i.e. two disparate reals or potentials) to follow how they establish a rapport with one another in the individuating process that brings into being a new dimension at another level of functioning (2020: 668). By using an analogical transduction to think a domain of reality we can show how that domain is “effectively the groundwork of transductive structuration” (2020: 14). The analogical method does not look elsewhere for concepts or norms to understand individuation, rather it uses transductive thought to come to know the individuation of being within a field of reality and the real operations in which structures are constituted (Combes, 2013: 13).

Combes (2003:12-14) argues that while we are always dealing with singular cases of individuation, Simondon proposes a more global theory of individuation by using a physical paradigm that can be applied to other domains of reality. As she explains it, the analogical method is constructive as it uses a transductive description from an initial domain of inquiry to establish its validity and then proceed by transferring this from one domain to another, while considering “differences between the diverse levels of individuation” (2013: 13). Transductive thought “is rooted in a milieu, which constitutes its historical dimension” (2012: 12). Moreover, the physical domain is the “first domain in which an operation of individuation can exist” (Simondon, 1995: 231, cited in Combes, 2013: 12). She describes Simondon’s formulations of this paradigm as fluctuating between crystallisation to clarify the concept of metastability and the possibilities of advancing a paradigm from the physical sciences whose validity has been already established. A constructivist approach, then, proceeds from the simple to the complex, the transfer from one domain to another, to construct a philosophy of individuation. Logically transductive thought can be “used as the basis for a new type of analogical paradigmatism in order to pass from physical individuation to organic individuation, from organic individuation to psychical individuation, and from psychical individuation to the subjective and objective transindividual” (Simondon, 2020: 14). Transductive thought passes from one domain of being to another “by the transfer of operations from one structure to another, while adding to each level the specificities [that the physical paradigm does not have the capacity to grasp]” (Combes, 2013: 14).

1.6.3 PSYCHIC AND COLLECTIVE INDIVIDUATION: THE TRANSINDIVIDUAL

Simondon (2020: 8-11) understands psychic and collective individuation as being a transindividual relation that operates in a reciprocal relation with one another, although this conception of (psycho-social) co-individuation retains a distinction between both domains of reality.[15] The psyche and the social are two poles of a single constituting relation, where psychic individuation is interior to the individual, and collective individuation is exterior to the individual (Combes, 2013: 25). The concept of the transindividual affords a unique way of thinking about the relation between the individual and society.[16] Rather than understanding the individual and society as existing in an established relation with one another where the psychic and the social are pre-constituted domains, Simondon examines their relation as "a reciprocal environment of exchanges of information and causality in the larger scope of a system that individuates" (Swan, 2015: 52).

The individual subject continues their individuation by striving to resolve tensions or conflicts in being, becoming a subject that intervenes as "an element of the problem" (2020: 9). This implies that successive individuations are defined by a metastable axiomatic as the individual strives to resolve psychical tensions in the milieu surrounding it that they have come into conflict with. The problematic of individuation is irreducible to the individual or the collective as the situation is constituted "by the tension of the ensemble formed by the relation of the species to its milieu wherein the relations of incompatibility become increasingly strong" (2020: 259). Simondon claims that the psychic being cannot resolve this problematic itself; any resolution requires drawing on potentials in pre-individual reality, and that surpass the limits of the individuated being (2020: 9). At the same time the individual is incorporated as a being in a "system of the world and the subject" where participation is "a condition of the individuation of the collective".

In his account of collective individuation Simondon attempts to grasp how individual subjects and the group co-emerge. Individuals enter relations with other beings that are distant from themselves, through the intermediary of a group (Combes, 2013: 43). On the collective level the process of individuation turns the individual into a group individual that shares a pre-individual reality that "individuates into a collective unit". The group is not an agglomeration of individuals but an overlapping of tendencies, drives, beliefs, somatic attitudes, significations, and expression, constitutive of a collective individuation (Simondon, 2020: 333).[17] The group comes into being when "forces held within many individuals lead to a collective structuration" (Simondon, 1989: 184, cited in Swan, 2015: 53). Individuals are both the milieu and agents of this structuration, characterised by participation and the overlapping of relational affective-emotional exchanges that have emerged to resolve tensions/potentials in the milieu (Simondon, 2020: 333). Both the individual and the group must be tensed and partially underdetermined for

individuation to occur. The group is transindividual action that is made possible when individuals come together "as elements of a system that contains potentials and metastability, expectation and tension" in the discovery of a new functional structure and organisation (2020: 339). The identity of the group is an emergent quality of this relational system, that retains indetermined pre-individual potentials.[18]

Simondon provides a "human energetics" conception of the social field, viewed as "a field in tension wherein taking on form occurs" (Combes (2013: 52). By adopting an energetic point of view of the mode of potentials that drive collective individuation that operate in preindividual interstices we are more equipped to interrogate how the social field is modified as a function of the conditions of metastability. This is an important compliment to social morphologies that concentrate on the stable structures of social reality. Combes (2013: 44, 48-9) characterises Simondon's conception of sociality as being a "natural sociality among humans" that mediates the conditions of life on a plane of immanence, while supposing a conception of human life as being indetermined, still charged with potentials. Moreover, she argues that this conception is not opposed to the political, but rather provides a way of thinking of the political outside the legitimation of the state. Simondon avoids any formal conception of the collective as contractual, or in terms of sovereignty that would legitimate the subsumption of society or civil society within the state (2013: 48). At the heart of this humanism Simondon asks: "How much potential does a human have to go beyond itself? What can a human do insofar as she is not alone?" (2013: 50).

1.7 CONCLUSION

Simondon's engagement with technicity provides a rigorous way of interrogating the ongoing technical individualisation of actuarial technical-human relations in youth justice to evaluate their potentials and limits. To what extent is the YLS/CMI an open technical object? How are tensions in its mode of operation, given disparate informational relations in its associated milieu, resolved? The evolution of a technical object provides a way of understanding the co-individuation of complex systems and their reticular relations that come into being by an operative process that is the product of "consistency and convergence" of disparate orders in their genesis. The technical object functions as an intermediary between the subject, the milieu and collective life, establishing relations that traverse psychic and collective structures on an immanent plane of consistency. Technicity is the modulatory informational process that temporarily resolves a series of technical problems concerned with incompatibilities or tensions between already constituted ensembles.

Simondon describes technicity as the metastable capacity or power to "normalise and stabilise" relations at key-points and critical moments across the techno-cultural network, converting one form of energy into another, mediating form and matter, and restructuring states of disparation as resonating relations. While he uses concepts such as "normalisation", "optimisation", "stabilisation" or "functional unity" in mapping the relations of technical individualisation, his conception of technicity as the unfolding of potential in a metastable field of relations doesn't support regimes of technocratic control that augment the contemporary operations of capitalism and the political rationalities that support it. The successive phases of concretisation continue to open the technical object and its operations to outside informational forces, degrees of indeterminacy that are harboured in the ensemble, and that have the potential to produce technical novelty, with economic, human, and intellectual consequences.

While some of the phases of concretisation may be of a relatively minor nature, making quite limited improvements that compensate for tensions in technical functioning, concretisation can generate "essential, discontinuous improvement" by transforming the distribution of functions and increasing the synergy of functioning in a substantive way (Simondon, 2017: 42-43). Technical invention has the capacity to create a "new function that modifies collective values and beliefs on the basis of its internal design, thereby modifying its associated milieu and impacting on (psychic and collective) individuation" (Lotti, 2016: 45). The operation of resonating communication that emerges from collective pre-individual being and incompatibilities in the milieu can make a difference as well as "uncover gaps of resistance to programmed" relations that "allow for the encounter with a "real collective" in the form of contagious transindividual thought" (2016: 46). It is the informational process at the centre of individuation that resolves the system's incompatibility by inventing a form situated at thresholds of intensity and the relational qualities of information. Combes (2013: 78) describes "Simondon's virtue" as having understood "technics as a network (that) now constitutes a milieu that conditions human action" through technical effort and its mentalities that modulates action. It is out of that milieu that we can "invent new forms of fidelity to the transductive nature of beings, both living and nonliving, with new transindividual modalities for amplifying action".

CHAPTER TWO: "EFFECTIVE REHABILIATION"

2.1 INTRODUCTION

While the previous chapter focused on the philosophical lens I bring to this thesis, this chapter explores the phylogenetic lineage of the technical object that is the subject of this thesis. I outline the development and adaptations made to the Level of Service (LSI) family of risk assessment instruments developed by Andrews and his colleagues in Canada and the US, beginning in early 1980s (Andrews, 1982). Throughout the thesis I refer to the developers of these instruments and their colleagues as the "Ottawa School" (or the "Ottawans"), a description used by Reisig et al. (2006: 385) to characterise their body of work. While the focus of my case study is on how the Youth Level of Service/Case Management Inventory (YLS/CMI) mediates the assessment and case management of the anticipated risk of re-offending in Youth Justice NSW, this chapter examines the operational structure of the LSI instruments more widely. The YLS/CMI was initially adapted from the adult version of the LSI in 1984 in Canada (Andrews et al., 1984) and has been modified an additional three times. All these instruments share the same operational structure that has not been altered over time despite minor modifications to some of the instrument's operational domains. The primary enunciative function of these instruments – evident in its case classification principles – revolves around aligning the risk assessment of an offender's anticipated level of risk with risk case management by targeting criminogenic needs.

The chapter begins by situating the Ottawan's development of the LSI instruments in a technical lineage that began with the development and implementation of the Burgess expectancy tables in parole decision-making and parole risk case management in Illinois (Burgess, 1928a, b; 1936). Burgess and his colleagues developed a series of actuarial risk instruments that coupled the differential potentials linked to the individualised rehabilitation of offenders and the aggregate risk management of offenders to enhance community safety. This abstract schema has spawned ongoing efforts to improve the functioning of this family of instruments to enhance its convergent regime of operation.

The remainder of the chapter outlines the Ottawan's actuarial schema for "effective" risk case management. While the Ottawans have imposed strict control parameters over the risk assessment and case decision-making of correctional authorities, their body of work expresses a will-to-power to establish authoritative relations as applied psychologists within the criminal justice system, to lead the formulation of evidence-based policy and practice and to establish their place within the field of criminology despite their hostility to many criminological accounts

of crime and its control. Subsequently, my account of the technical operations that have been coded into the LSI instruments incorporates the developers' empirical and discursive strategies for legitimating the deployment of these instruments in criminal justice and human service milieus.

The developers of these instruments were proponents of the "what works" movement that emerged in the 1980s in response to demands for more accountability and rationality in correctional policy and interventions with offenders. While they articulated the importance of providing empirical support for the selection of risks encoded in risk assessment instruments and for providing evidence that adherence to their principles of case classification would reduce rates of re-offending, their own claims were at times exaggerated (see section 2.4.1 of this chapter). The instruments were sold to an increasing number of criminal justice jurisdictions bolstered by a number of discursive claims that they were evidence-based and that these instruments advanced the field of risk assessment; however, support for these claims came later through an actuarial network of local evaluations, and meta-analyses have limited the possibilities for any significant modification of the LSI instruments (see Chapter Five on the role of meta-analyses as a boundary maintenance mechanism). Subsequently, I critically examine the core claims made by the Ottawans, many of which are now taken-for-granted and have become a repetitive component of evidence-based discourse. I consider their explanation of criminality, their self-promotional branding of "generations of instruments", their use of meta-analysis and a detailed account of their principles for "effective rehabilitation". I argue that the purported "improvements" made in their "fourth generation" LSI instruments that have done little to advance the technical evolution of their instruments but that have been more concerned with establishing greater control over practitioner compliance and establishing a mobile, system-wide integration of risk assessment and case management to ensure that criminogenic needs are the primary target of the "rehabilitative" effort.

2.2 LOCATING THE TECHNICAL LINEAGE OF THE LSI INSTRUMENTS

Simondon (2017: 46) proposed that it is possible to identify the beginning of a technical object's ontogenetic lineage by its "synthetic act of invention constitutive of a technical essence". I contend that Burgess's expectancy tables established an abstract schema of functioning that has informed a lineage of actuarial endeavours that have attempted to advance or concretise the operations of actuarial risk case management. This lineage can be identified by its functional schema that couples rehabilitative and risk reduction operations to regulate these different lines of activity to enhance community safety within correctional milieus that extend beyond parole. When Simondon refers to a technical object's "essence" he is referring to its invented "pure schema of functioning that is transposable to other structures" (2017: 45). In the case of the

expectancy tables developed by Burgess, this abstract schema resides in the instrument's capacity to classify the level of anticipated risk – that is, divide the offender population into probabilistic risk categories – and apply a discursive rule articulated as a risk principle that determines the level and character of risk control according to allotment to the risk categorisation. In this schema rehabilitative goals are pursued under limitative conditions given the prioritisation of community safety.

Burgess and his colleagues (Burgess, 1928a, b) developed a series of actuarial risk assessment instruments that were implemented in Illinois in 1933 in parole decision-making and risk management (see Harcourt, 2007: 51-59).[1] These expectancy tables enabled a mode of functioning where the differential potentials of individualised offender rehabilitation and the aggregate risk management of offenders to promote community safety worked in conjunction with one another. A mediation between these differential orders of reality was partially realised to integrate the functions of disciplinary normalisation and biopolitical regulation. This abstract schema established a juncture between the individual body and the offender population by making a probabilistic calculation of the penal subject's anticipated location within a distributed risk population (see Foucault, 1978: 147-149). This event restructured the exclusively individualising operations of the penal welfare sanction in greater alignment with the classification of the level of risk to help decide who should be released on parole and to modulate the level and nature of supervision they received in the community. Burgess conceived the criminal justice system's objectives of protecting society and of rehabilitating offenders as being mutually interdependent:

> In the first place the best way to protect society from the criminal is to rehabilitate him, that is to say, to restore him to society as a law-abiding citizen. In the second place, if the protection of society is held as the actual guiding principle of prison administration and parole, the work of reforming the criminal and of crime prevention will be markedly advanced. (1936: 494)

Burgess argued that these expectancy tables mediated the polarities of penal policy and practice that were excessively punitive or too lenient in the interests of security. Both poles have the potential to generate detrimental effects that result in threats to public safety. Installing a risk classification and risk management scheme into the circuits of penal case management provided a technical solution to arbitrariness in correctional decision-making, mediating its extremities to probabilistically determine a biopolitical threshold of tolerability for releasing inmates on parole. The penal schema envisaged by Burgess extended beyond the parole apparatus to extend the logic and practices of actuarial risk management across the key sites of penal administration in a networked relation where all authorities are oriented towards community safety and the

rehabilitation of offenders, while placing limits on rehabilitation for a smaller segment of the offender population who are managed using the logic of incapacitation.[2]

In Burgess's view this penal schema provided a performative function, a matter of "demonstrating to the public that parole can be organised and administered for its protection" (1936: 495). He commented: "All too often both the public and the media feel that parole is that part of the machinery of criminal justice that undoes all that has been achieved by the police, the prosecuting attorney, the judge, the jury and penal confinement" (1936: 493). He envisaged that the dissemination of aggregate data about the success of corrections could help raise public confidence, anticipating the contemporary mediatization of criminal justice data as a key element in the biopolitics of crime prevention (1936: 501).

The Burgess expectancy tables divided offenders into three categories of risk founded on a risk principle that straddled incapacitating and rehabilitative biopolitical objectives and that distributed resources prudently when an offender was released into the community. He proposed that those predicted to have at least a 50% chance of "parole success" be released using a risk principle that mobilised "unusual precautions […] in placing [the offender] and supervising his conduct" (1928b: 544). Those classified in the lowest two percentile groups of the expectancy table (see Figure 2.1) would remain incapacitated, while those predicted to be the most likely to succeed would require less supervision and support.[3] Moreover, Burgess proposed that these prediction instruments could be used as an element in the establishment of an evidence-based policy milieu where the aggregate expectancy rate of parole violation for the offender cohort could be used as a benchmark to evaluate the performance of "old and new methods of treatment". This is analogous to efforts in public health aimed at reducing the mortality rate and to stimulate new discoveries in "social treatment" (1928b: 545). When this actuarial scheme was implemented in Illinois, state actuaries (who had been employed in the state's penitentiaries and reformatories for adult males and young men) began using these benchmark estimates to determine their efficacy in reducing the parole violation rate (1936: 500). While rehabilitation then emphasised the norm of employment as the primary mechanism of normalisation in the re-integration of the offender into the community,[4] actuarial risk management was focused on reducing the re-offending rate as the primary outcome criterion of parole management.

Figure 2.1 Burgess's first expectancy table (Source: Bruce et al., 1928: 248, Table XXVII)

EXPECTANCY RATES OF PAROLE VIOLATION AND NON-VIOLATION

POINTS FOR NUMBER OF FACTORS ABOVE THE AVERAGE	NUMBER OF MEN IN EACH GROUP	EXPECTANCY RATE FOR SUCCESS OR FAILURE			
		Per Cent Violators of Parole			Per Cent Non-violators of Parole
		Minor	Major	Total	
16-21	68	1.5	....	1.5	98.5
14-15	140	.7	1.5	2.2	97.8
13	91	5.5	3.3	8.8	91.2
12	106	7.0	8.1	15.1	84.9
11	110	13.6	9.1	22.7	77.3
10	88	19.3	14.8	34.1	65.9
7-9	287	15.0	28.9	43.9	56.1
5-6	85	23.4	43.7	67.1	32.9
2-4	25	12.0	64.0	76.0	24.0

Burgess's expectancy tables transform symbolic-cognitive forms of logic into a predictive calculus using the determinate risk codes assembled in the instrument's summary sheet and its scoring system to distribute offenders across its nine percentile zones of risk. The way in which the codes were established is not visible in the table, and much of the labour that transformed the criminal histories and individual biographies into statistical probabilities is not apparent. In the same way as Quetelet (1842) reasoned, these tables assumed that the propensity of the average man to commit a crime could be calculated on the rate for the group under scrutiny and that the distribution of members of a population can be fitted to the statistical norm (Stigler, 1985: 170).[5] The expectancy table functions as a truth table that concretises the logical function that combines its input variables to generate a valued output variable, the expected rate of parole violation or recidivism (Mackenzie, 2017: 23). Under Burgess's scoring system, the input variables can only take the values true or false, coded into the risk calculus as 1 and 0. Allotment to a risk classification level constitutes a statement that operates as the primary enunciative function of the instrument, distributing subject positions for both penal authorities and offenders. The risk classification schema is the "referential" that establishes the conditions of possibility and the limits for how objects are named, designated, or described and for "the relations that are affirmed or denied" (Foucault, 1972: 91). At this enunciative level, risk classification establishes "the authority to differentiate between individuals or objects, states of things and relations that are brought into play by the statement itself".

Burgess's expectancy tables were arbitrary in the selection of risk codes and provided no assurances in relation to their reliability and predictive accuracy. In addition, while the expectancy table's operational schema had two relational operational domains – risk classification and risk management – there was no necessary recurrent causality between these domains, as the table provided no determinate way of modulating risk case management. The expectancy tables spawned further actuarial research that explored the development of alternate prediction instruments in probation and parole as well as efforts to improve the

Burgess expectancy tables and to improve their predictive efficiency and validity (see Harcourt, 2007: 59-76). Eleanour and Sheldon Glueck's ongoing developmental work in the prediction and prevention of recidivism was part of this phylogenetic lineage. They spent the bulk of their research lives examining the causes of persistent offending to determine "the bases for truly crime-prevention programs and effective therapy" (Glueck and Glueck, 1950: ix). Their earlier work developed "a network of predictive instruments" that could be used in initial sentencing, granting parole, ongoing parole supervision, and for sentencing recidivists (1960: 20; 1930: 282-289). After conducting an exhaustive study of the risk factors associated with juvenile delinquency, they developed three prediction instruments to identify "the true danger signals of delinquency that were operable in the lives and makeup of boys prior to school entrance" (1950: 258; 1960: 22). One of these instruments was the Social Prediction Table that was later used in pre-crime initiatives in elementary schools and youth centres in disadvantaged urban zones in the US to identify delinquency-prone children and provide special services to prevent delinquency.[6]

2.3 MODULATING CLINICAL RISK ASSESSMENT

In Harcourt's account of the proliferation of actuarial methods in law enforcement and punishment since the 1970s and the first decade of the 21st century, Paul Meehl is described as being highly influential in the development of a shared perception within the scientific community that actuarial instruments are better at predicting the future compared to clinical judgements (2007: 106-107).[7] Actuarial risk assessment instruments are broadly understood as limiting the discretionary power of correctional authorities in response to an ongoing crisis in the legitimacy of penal modernism and the penal welfare sanction and the increased security demands placed on the state in the face of substantive changes in social, economic and political structures since the 1960s (Garland, 1990, 2002; Simon, 1993).[8] From this perspective, actuarial instruments undermine the professional authority of case workers or other allied professionals, effectively "displacing" or "replacing" clinical or social work individualised assessments with an actuarial risk matrix (Simon, 2005; Harcourt, 2007: 106). If one looks closer at Meehl's work, he can be characterised as instrumental in advocacy for the deployment of actuarial prediction in applied psychology milieus to elevate the profession's status and extend its sphere of influence.

Castel (1991: 283-287) has argued that the inherent fallibility of the clinician's diagnosis of dangerousness exposes mental health experts to blame when adverse events occur.[9] To take preventative action without resorting to the crude and overly prudent use of confinement or some other form of incapacitation, a risk assessment of a combination of "objective" factors that generate probabilities about undesirable behaviours overcomes this difficulty while widening the reach of the clinician or any other professional conducting the risk assessment.

The logics and practices of actuarial risk assessment-risk management have become integral components in professional responsibility mediating professional subjectivity under the duty to minimise risks (Rose, 1998: 184). The logic of the risk prediction replaces the logic of diagnosis or clinical assessment, reconfiguring professional status to that of a knowledge worker "engaged in the accumulation, calibration, classification and interpretation and communication of information relevant to judgements about risk" (1998: 185).

At the same time, the pre-eminent role of the clinician is challenged by the risk instrument, and the direct relation with the assisted subject transformed. Clinicians become subsumed within a team of other surveillant authorities recruited into a preventive policy that attempts to systematically anticipate and prevent the emergence of some undesirable event (Castel, 1991: 288). Castel insists that this shift becomes possible when "the notion of risk is made autonomous from that of danger" (1991: 287). Surveillance no longer exclusively requires a direct observing gaze as risk surveillance and its normalising interventions become more mobile, operating without the necessity of direct contact "or even the immediate representation of the subjects under scrutiny" (1991: 288). Relations are distanced as the subject of intervention is "deconstructed" (disaggregated) and "reconstructed" (re-aggregated) as a combination of heterogenous factors liable to produce risk.[10]

2.3.1 META-ANALYSIS AS A LEGITIMATING TECHNIQUE FOR ACTUARIAL RISK ASSESSMENT

Meehl was a clinical psychologist who developed a framework for interrogating whether actuarial or clinical methods of prediction worked better in applied settings where critical decisions are being made about psychiatric or forensic admissions, psychotherapy, pharmacological intervention or other harmful interventions like shock therapy (1954: 3-9).[11] He did not completely oppose clinical methods, but rather emphasised the need to empirically validate clinical predictions in relation to the relative probability of specific events. Meehl was conscious that the clinician had "special powers" that exceed the mechanical application of an actuarial table or a regression equation, in particular in relation to apprehending the weight of rare events that need to be taken into account in making predictions (1954: 24-25). His actuarial project attempted to augment and extend the power and authority of the clinician's predictions deploying an amalgam of tools "unique" to the psychologist including psychometric devices, as well as a statistical orientation and skill base (1954: 7). Meehl was searching for a technique capable of assigning a criterion of "confidence" about whether the clinician's predictive statements are empirically confirmable (1954: 33). The technique he arrives at prefigures

contemporary meta-analyses designed to establish the predictive accuracy of clinical versus actuarial mechanisms. Given the class of future event being predicted, how do the sum of confirmable events compare on a matrix of aggregate relative probabilities, *probability1* and *probability2,* given the competing methods of prediction? Given the impossibility of a perfect prediction by either means, these contrasting hierarchies of relative probabilities function as an arbitrator of truth: what does the "empirical study of frequencies […] tell us on which system of classifying the predictions we ought to lay our bets [?]" (1954: 34).

Meehl (1954: 83-128) conducted the first comprehensive literature review that attempted to provide an answer to this question. He assembled and reviewed roughly 20 studies that compared the two methods, many of which had defects and ambiguities, finding "in all but one of which the predictions made actuarially were either approximately equal or superior to those made by the clinician" (1954: 119). These studies straddled the prediction of success and failure in the fields of training or schooling, criminal recidivism, and recovery from major psychosis. Given the considerable methodological flaws in the studies he reviewed, he was compelled to exercise caution in claiming the superiority of actuarial prediction. He recommended that further research needed to resolve these methodological defects and investigate predictive efficacy more carefully within the applied contexts in which they operated. His work was seminal in propagating similar research that was eventually superseded by meta-analytic validation techniques.[12] The researchers using these techniques claim that, by standardising contingencies in individual evaluative studies of predictive accuracy, meta-analysis provides more authoritative truth claims about predictive efficacy that legitimate the deployment of actuarial instruments in clinical practice (see Chapter Six). Meta-analytic evaluations about predictive accuracy normalise the deployment of actuarial instruments in the milieus in which they are established, while simultaneously elevating and diminishing the professional status of clinical authority.[13]

It was not until 2000 that the first meta-analysis was published that concluded that "on average, mechanical prediction techniques were about 10% more accurate than clinical predictions" (Grove et al., 2000: 19). These researchers considered that because mechanical and clinical predictions often differ, data-driven research such as theirs provided an ethical solution to the problem of beneficence by minimising the number of predictive errors. Which prediction modality should a decision-making authority follow when the two predictive methods generate different outcomes for individuals?[14] In this sense the "overseers of prediction" – the meta-analysts – assume an elevated status that interpolates other authorities (psychologists, the developers of actuarial instruments, policy makers, other human service professionals, the judiciary) into the actuarial enterprise casting everyone as moral agents "obliged to maximise

expected utility for a relevant stakeholder in order to meet their fiduciary responsibilities (Grove, 2005: 1236).

Meehl (1986: 372) puts it this way:

> Now if a four-variable regression equation or a Glueck actuarial table tells the criminal court judge that this particular delinquent will probably commit another felony in the next three years and if a case conference worker or social worker says that he will probably not, it is absurd to say that Sarbin and I have 'formented a controversy' about how the judge should proceed. The plain fact is that he cannot act in accordance with both incompatible predictions. Nobody disputes that it is possible improve clinicians' practices by informing of their track record actuarially. Nobody has ever disputed that the actuary would be well advised to listen to clinicians in setting up the set of variables.

2.4 THE "EFFECTIVE REHABILITATION" OF OFFENDERS

The remainder of this chapter concentrates on the supposed "evidence-based" network of risk assessment instruments developed by Andrews, Bonta, Hoge and Wormwith. The Level of Supervision Inventory (LSI) was the first of these instruments, developed in the early 1980s for use in corrections in the US and Canada, targeting adult male offenders (Andrews, 1982). Around that time, the LSI and the Wisconsin Risk and Need Assessment (Baird et al., 1979) began being used in the US to align the risk assessment with decisions about placement and offender treatment across correctional settings.[15] I contend that this family of LSI Instruments have an individuality that shares a phylogenetic lineage with the abstract technical schema invented by Burgess and his colleagues for use in parole. As a schema of functioning, the LSI developers established a pairing between risk classification and the risk management of the offender population to promote community safety at successive levels of self-specification that was eventually was concretised in the Level of Service/Case Management Inventory (LS/CMI) (Andrews et al., 2004a) and the YLS/CMI (Hoge and Andrews, 1995). These instruments establish a more effective autocorrelation and convergence of operations across these two milieus of operation. In this sense the YLS/CMI has a "historical being-with-other-objects" that share the same technical functioning, partaking in this evolutionary phylogenetic line (Lindberg, 2019: 304).

The LSI and its adaptations are summarised in Figure 2.2. The horizontal axis identifies the two main adaptations to the LSI for use with adult offenders while the vertical axis identifies the three minor adaptations made to the Youth Level of Service Inventory (Andrews et al., 1984). There is scanty information on the public record about how the youth version was adapted from the LSI. By the time that NSW began implementing the YLS/CMI-AA, the parent version used the

operative structure of the LSI/CMI which was in development around the same time. The youth versions retain the eight risk domains used in this adult version, which are imbricated with Andrew and Bonta's (1994) theoretical explanation of criminal conduct. Thus, while the youth versions modify the risk items included in the instruments, they pre-suppose that young people can be profiled as having an antisocial personality despite their developmental status and that the risks associated with re-offending are the same as that of adults.

Figure 2.2 The technical lineage of the LSI Instruments

LSI (Andrews, 1982) ⇒ LSI-R (Andrews and Bonta, 1995, 2000, 2001) ⇒ LS/CMI (Andrews et al., 2004a)

⇓ ⇓

YLSI (Andrews et al., 1984) ⇒ YLS/CMI (Hoge and Andrews, 1995) ⇒ YLS/CMI.1 (Hoge and Andrews, 2003) ⇒ YLS/CMI.2 (Hoge and Andrews, 2011)

Andrews and his co-developers were applied psychologists who expended considerable energy to advance the disciplinary status of psychology within the criminological field, championing actuarial mechanisms over clinical forms of assessment. Andrews and Bonta (1994) crafted their psychological explanation of crime to incorporate the concept of "criminogenic need", which was central to the assessment of the risk of re-offending and their rationale for modulating the level of service and treatment. I begin by mapping the development of LSI and the adaptation, the LSI-R to make visible a line of "evidence-based" actuarial penal policy and practice. This movement attempted to combat a political economy that considered that "nothing works" in the rehabilitation of offenders, by providing evidence that it was possible to rehabilitate offenders. I map the empirical and discursive strategies used by this group of researchers to legitimate the use of the LSI family of instruments within criminal justice milieus. This provides a general orientation for my analysis of the ongoing operations of the YLS/CMI in NSW, the focus for the remaining five chapters of this thesis.

2.4.1 THE LSI AND ITS ADAPTATION

As noted above, the development of the LSI began in the late 1970s using a sample of adult male offender samples in Canada and the US (Andrews, 1982). Andrews and his colleagues were proponents of the "what works" movement during a time when there was a widespread belief that "nothing works" and that "rehabilitation is dead" (Cullen, 2005: 1). Cullen characterises Andrews and his co-developer Bonta as being skilled scientists who established the "principles of classification for effective rehabilitation" in offender rehabilitation (Andrews et al., 1990). Echoing the arguments of the Ottawans, Cullen (2005: 17) claims that this provided a knowledge

base about “treatment effectiveness” in an accessible form for practitioners and established a statement of principles that were “testable” to demonstrate that adherence to the developers’ case classification principles reduces recidivism.

The prototype for the instrument was developed by a team of researchers led by Gendreau at the Ontario Ministry of Correctional Services. Initially they investigated whether an actuarial instrument that used social history codes was more effective in predicting recidivism than psychometric data where correctional psychologists often used the Minnesota Multiphasic Personality Inventory (MMPI) to inform parole decisions (Gendreau et al., 1980). Influenced by Meehl’s (1954) evaluation of actuarial prediction in clinical practice, the research cast doubt on the efficacy of clinical judgment founded on general personality assessments in correctional settings which were still being used in North America into the 2000s.[16] A sample of 802 offenders, who were mostly first-time offenders, were interviewed about their social history and subjected to a battery of psychometric tests. The offenders were prospectively tracked for two years to measure recidivism. Multiple regression methods were used to identify the best predictors of recidivism, by isolating the social history variables initially and then comparing predictive accuracy based on those codes compared with MMPI variables. The sample was randomly allocated to a construction and validation group to legitimate the predictive efficacy of the LSI prototype.

In the next phase, parole officers were interviewed to develop “a practitioner-informed” actuarial instrument that prioritized risk variables that were demonstrated to be linked to recidivism (Andrews, 1982). This instrument was developed using professional input in three locations: Ontario, Wisconsin, and Alabama (1982: 3, 28 *fn* 1, 2). Nonetheless, the researchers felt that correctional authorities needed to be more explicit about how decisions were made about the level of supervision and the type of services “clients” needed (Andrews and Bonta, 2003: 244). The instrument incorporated a checklist of 58 risk items that were scored using the method developed by Burgess (1928b). The risk items were distributed across 11 risk domains – criminal history, education/employment, financial, marital/family, accommodation, leisure/recreation, companions, alcohol/drug problems, emotional/personal, probation conditions, and attitudes/orientation – that were demonstrated to have “reasonable” internal relations that were “mildly and positively related” (1982: iii), and that generated “satisfactory” estimates of recidivism when it was followed up for re-validation on a sample of 598 offenders (Andrews, 1982: iii, 15-21).

This prototype was revised in 1995 by Andrews and Bonta and licensed for sale with Multi-Health Systems (MHS), a company that specialises in the development and sale of assessment instruments in clinical practice, education, public safety, and human resource recruitment. The

Level of Service Inventory-Revised (LSI-R) remains in usage, currently marketed by MHS as "the most widely used and widely researched risk/need instrument in the world".[17] There, the LSI-R is described as a quantitative survey using 54 items of offender attributes and their situation relevant to supervision and treatment decisions. It was designed for use with offenders aged 16 years and above for identifying treatment targets and monitoring offender risk while under supervision and treatment, for making probation/supervision decisions, for making decisions regarding placement into half-way houses, for making security-level classifications in carceral settings, and for assessing the likelihood of recidivism (Andrews and Bonta, 2001: 3). The revised instrument makes quite minor modifications, reducing the number of risk items and risk domains, as well as re-norming the scoring system to specify classes of risk.[18] The instrument uses a series of questions in its 10 risk domains of purported theoretical importance in predicting re-offending (criminal history, education/employment, financial, family/marital, accommodation, leisure/recreation, companions, alcohol and drugs, emotional/personal, and attitudes/orientation). Like all instruments in this network, the LSI-R predicts levels of risk to modulate the degree of intrusiveness of risk control, to target elevated criminogenic needs, and to enable some degree of practitioner discretion in amending an offender's risk classification score.

Since the early 1990s the developers of these instruments have worked closely with other members of the Ottawa School to legitimate their instruments and promote their brand of "effective rehabilitation". One way they have promoted their own work has been the use of meta-analyses about what treatments are effective in juvenile and adult corrections (Andrews et al., 1990a, b) and about which predictor domains and actuarial instruments are the best predictors of adult offender recidivism (Gendreau et al., 1996). They used methodologies that favoured their own emphasis on dynamic criminogenic needs, treatment modalities and the LSI, generating over-estimates of the significance of their relationship with recidivism. Over time, more and more quantitatively minded academics have participated in the Ottawan's network carving out careers by conducting evaluations of the predictive efficacy of these instruments, facilitating their implementation into new jurisdictions and by developing and evaluating offender programs. The initially quite limited empirical claims advanced by the Ottawans are now largely taken-for-granted by those who participate in this global enterprise, bolstered by the results of meta-analytic research. Chapter Five examines the role of meta-analysis in the legitimation of the LSI instruments in greater detail, identifying the limitations of this research enterprise. In addition to the use of meta-analyses, the legitimacy of the LSI network of instruments pivots on three other inter-related strategies that exceed the strictly empirical and that are described below: the nesting of these instruments in Andrews and Bonta's (1994, 1998, 2003, 2006, 2010, 2017) theoretical explanation of criminal conduct, rhetoric about

"generations of assessment instruments", and the establishment of the "risk-needs-responsivity" case classification scheme as being necessary for "effective rehabilitation".

2.4.2 THEORETICAL APPARATUS: GENERAL PERSONALITY AND COGNITIVE SOCIAL LEARNING

Andrews and Bonta (2010: 8) have advanced a psychological explanation of criminal conduct that they claim provides a generalisable and empirically informed theoretical account of "variation in the delinquent and criminal behaviour of individuals" and that has practical application in the treatment of offenders. Their definition of criminal behaviour is as follows:

> Criminal behaviour refers to antisocial acts that place the actor at risk of becoming the focus of the attention of criminal justice professionals within the juvenile and/or adult justice systems. (2010: 12)

This definition widens the orbit of crime prevention to incorporate more preventative interventions outside of the criminal justice system: in education, social, human, and clinical services (2010: iii). Their project is totalising and expansionary claiming a reign of "rehabilitative jurisprudence" over all modalities of punishment as well as human services milieus where children's and young people's problematic conduct will come to the attention of allied professionals.[19] At the core of this project is the tactical elimination of antisocial behaviour by increasing the rewards associated with prosocial behaviour and decreasing the rewards associated with crime and anti-social behaviour (2010: 451). It is Andrews and Bonta's belief that rehabilitation is a cost-effective way of reducing crime rates (2010: 433). Here, they cite two studies by Aos et al. (2006) and Drake et al. (2009) that concluded that a "moderate-to aggressive implementation policy of effective treatment programs" in the State of Washington could avoid building any new prisons without any increase in crime rates and generate substantial savings to the budget.

Andrews and Bonta (2010: 131, 220) characterise anti-social personality as being a pattern of dynamic factors involving elements of weak self-control including being impulsive, lacking persistence and being neither reflective or planful, as well as elements of disagreeableness including being spiteful, antagonistic, feeling mistreated and being indifferent to others. They distinguish this pattern from "pathologising" traditions in clinical practice such as the DSM-IV's diagnostic criteria for determining antisocial personality disorder or Hare's Psychopathy Checklist (2003) that is used to diagnose psychopathy.[20] Andrews and Bonta purport that antisocial personality is a constellation of dynamic factors where individuals are more likely to reoffend because of their elevated criminogenic needs. Despite their position that the dimensions that establish an antisocial pattern "may" be open to change if the situations in

which they manifest are modified, elevated scores on these dimensions places the individual under categorical suspicion of being someone with an anti-social personality and a recidivist even when they are a child. By contrasting their conceptualisation of antisocial personality with "psychopathological models", rhetorical support is provided that "treatment becomes a possibility" (2010: 222). In the case of children, a diagnosis of conduct disorder is considered a prognostic indicator of antisocial personality disorder.[21] A childhood diagnosis of conduct disorder would establish that the child has a serious emotional and behavioural disorder that would be considered a disability that interferes with their ability to thrive in settings such as school. This would not preclude treatment and if managed as a disability would not expose the child to an intense constellation of interventions premised on criminogenic needs.

Andrews and Bonta claim that there are eight risk/need factors that have been demonstrated to best predict recidivism, where four of these (the "big four") are the strongest predictors being "the major causal variables in the analysis of the criminal behaviour of individuals" (2010: 55). These are a history of antisocial behaviour, anti-social personality pattern, antisocial cognition, and antisocial associates. The "moderate four" are family/marital circumstances, school/work, leisure/recreation, and substance abuse (2010: 58-60, Table 2.5). The LS/CMI (Andrews et al., 2004a) was developed as an alternative to the LSI-R using these eight risk domains.

The absence of risks in each of the eight domains is considered as being a "strength", while elevated risk scores are understood as "dynamic needs and promising intermediate targets of change" (2010: 58-60). For example, it is proposed that the presence of antisocial cognitions can be changed by reducing antisocial thinking and feeling and through building and practising less risky thoughts and feelings by adhering to the risk, need and responsivity classification principles (2010: 59). A history of offending assumes the most significance when it occurred at a young age, when there are many prior offences and rule violations on probation or parole (2010: 58). In this risk profiling there is a dematerialisation of the offense in terms of its seriousness, or the harm done to others. These are described as not being risk factors, but rather aggravating factors relevant to sentencing.

Andrews et al. (2011: 38) consider that antisocial personality reflects "genetic predispositions in combination with the personal, interpersonal, and community-based density of rewards and costs for criminal and noncriminal alternative actions". In any situational context, an individual's conduct can be "relatively automatic, intrinsic and unconscious" or it can be regulated by a dense system of rewards and punishments. This perspective resonates with the Gluecks' (1950: 3-7) multifactorial explanation of juvenile delinquency. They defined delinquency as a "complex biosocial problem" arguing that this necessitates an empirical investigation of "the selectivity that occurs when environment and organism interact" (1950: 7).[22] Andrews and Bonta

considered the Gluecks' identification of individual (physical, temperamental, altitudinal, cognitive) and familial (weak internal controls resulting from poor parenting practices and modelling) as being criminogenic factors were supportive of their own theoretical orientation.

2.4.2.1 THE PERSON IN THE IMMEDIATE SITUATION: THE COGNITIVE SOCIAL LEARNING APPROACH TO INTERVENTION

In Andrews and Bonta's (2010: 134) conceptualisation a criminogenic need is an immediate risk situation saturated with "definitions favourable to criminal acts". The situation contains temptations and/or dimensions that are attractors for criminal conduct. These foreground forces may compete with forces that might not be conducive to the commission of the act (situational factors that inhibit or prevent committing the act, the balance of rewards and costs, personal choice, having objections to committing the crime, self-regulation, not having the capacity to commit the crime and so on). At the same time, "background dispositional factors" shape the person and the immediate context of action, including temperament, verbal aptitude, socialisation, self-management ability, early and generalised conduct problems (2010: 136-137). Andrews and Bonta consider that there are multiple pathways into criminal conduct, asserting that antisocial attitudes and criminal associates are particularly strong forces. They bracket the political economy, social structure, and culture as being out of this immediate situation claiming, "they are constants […] distal background contextual conditions that cannot account for variation in individual conduct within particular social arrangements" (2010: 137). The orbit of concern and regulation to prevent criminal acts is bounded within risks linked to personal (e.g., genetic disposition, personality, early conduct problems, conventional ambition and performance, cognitions favourable to crime), interpersonal relations (e.g., family-child relations, ties to criminal others) and community (e.g., number of criminals in the community, relations with schools, child protection and justice agencies).

Their cognitive social learning approach is predicated on a "radical behaviourism" that targets the immediate situation of action using a social cognition and social learning approach (2010: 142, 150). To prevent criminal acts from occurring, contingencies "that account for stability in behaviour over time and across situations" are targeted for behavioural and environmental modification to reduce the likelihood of these events recurring. Any behavioural pattern is understood as being under the control of antecedent and consequent events which can be varied in the signalling of rewards and costs to alter behaviour (2010: 144). The antecedent conditions can be altered by prosocial modelling, avoiding contact with antisocial associates and so on, and the rewards and costs of behaviour controlled consequentially by adding or subtracting the density of these rewards and costs. Behaviour modification techniques are used to target and regulate the actor, other people in the situation of action and the act itself. These

behavioural tactics deployed are modulated by a comprehensive individualised assessment of current and potential rewards and costs targeting elevated criminogenic needs.

Andrews et al. (2011: 738) characterise these offender programs as practitioner-led "structuring" interventions that model, reinforce, build skills, promote better problem-solving and use cognitive restructuring. Offenders may be subjected to behavioural containment (e.g., intensive behavioural surveillance that prohibits particular kinds of conduct, segregation, systems of punishment for non-compliance). Offenders are obligated to participate in these programs that nudge the offender to take full responsibility for their self-management irrespective of their age or any other structural consideration that might debilitate them. Cognitive-behavioural programs assume a key role in the prevention of recidivism as Andrews and Bonta understand antisocial attitudes, values, and beliefs as determining the direction of the individual's self-control, thus requiring modification (2010: 154).

2.4.3 "GENERATIONS" OF RISK ASSESSMENT INSTRUMENTS

The year after MHS began selling the LSI-R, one of its developers introduced the idea that there were "generations" of actuarial instrument that advance the actuarial enterprise as a scientific endeavour (Bonta, 1996). In a highly self-referential manner, Bonta asserted: "[…] right now […] advances in offender assessment are proceeding at an exponential rate" (1996: 19). Aligning himself with Meehl's advocacy for actuarial risk assessments, Bonta began by contrasting "first-generation" professional/clinical judgments with "second-generation" actuarial instruments that improve the prediction of the future by using "objective" and verifiable risk criteria.[23] Lacking any coherent or systematic analysis, he bundled Burgess' expectancy tables, the Glueck prediction tables and instruments that emphasise static factors together, describing them as "second-generation" instruments ignoring their different ontogenetic technical lineages.[24] Bonta was particularly concerned with the over-use of instruments that rely heavily on static factors and limit the potential for rehabilitation that were being heavily used around the time of his publication.[25] In this way he established a boundary between the majority of actuarial instruments then being used in corrections and the growth of "third-generation" risk/needs instruments "that finally links the assessment process to rehabilitation and advances us still further" (1996: 19). In his characterisation, a third-generation instrument incorporates an assessment of change into the infrastructure of the instrument:

> Rehabilitation is based on the premise that people can change, and if assessment is to contribute to rehabilitation efforts it must be capable of measuring change. This notion of the measurement of change is what fundamentally separates the second-generation assessment tools from the third generation. (Bonta, 1996: 22)

This was a self-aggrandizing strategy to promote the LSI-R by someone who was a key stakeholder invested in the emerging "what works" correctional movement. Bonta claimed that the LSI-R was the only instrument available at that time that had been "intentionally" designed to measure criminogenic needs and empirically demonstrate that its risk variables are linked to recidivism. He stressed that the instrument was designed to be re-administered to measure changes that may result from the targeting of dynamic risks/criminogenic need and that can be used to realign services to "maximise the reduction of criminal behaviour" (1996: 25). The LSI-R manual introduces this norm of practice, linking this with the risk principle that matching more intensive treatment with high-risk offenders is more effective in reducing re-offending (Andrews and Bonta, 2001: 47-48). The re-assessment of risk classification was later concretised into the LS/CMI case management protocol where the case manager is required to review progress in reducing targeted criminogenic needs and re-assess the level of risk (Andrews et al., 2004b: 34). In this way both the offender's behaviour and the intervention itself is auditable, and this information can be used for adjusting the elements of risk programming and the management of offenders using the risk parameters coded into the instruments. Logistically, offender programming is oriented towards offender-focused programs that target criminogenic needs, while rehabilitation is fundamentally about reducing the risks operationalised as "criminogenic needs" associated with offending behaviour.

Like any good marketing campaigner Bonta ended his paper by announcing the promise of a "fourth generation" risk/need assessment instrument, indicating that in addition to the targeting of elevated criminogenic needs in any rehabilitative effort, the effectiveness of the treatment program can be enhanced by incorporating a "responsivity principle" into case management practices (1996: 31-32). He argued that by assessing and attending to the individual characteristics of offenders (e.g., motivation, anxiety, self-esteem or cognitive abilities) that might impact on how well the "client" responds to an intervention this would enhance the effectiveness of intervention. The responsivity principle and its relationship with the "improved" fourth generation instruments such as the LSI/CMI are discussed in the next section.

Bonta deployed a progressivist narrative about actuarial instruments that is less concerned with the technical evolution or concretisation of any specific family of actuarial risk assessment and more invested in establishing a series of rules or benchmarks about how rehabilitative interventions should be undertaken within an evidence-based penal milieu that is focused on reducing rates of crime.[26] In his promotion of the LSI-R Bonta presented the instrument as evidence-based in its mode of operation, capable of modulating the character of the intervention, auditing the effectiveness of those interventions and adjusting the intervention strategy to the changing circumstances in the lives of offenders.

2.4.4 THE ENUNCIATIVE FUNCTION OF THE LSI-R NETWORK OF INSTRUMENTS: THE PRINCIPLES OF RISK-NEED-RESPONSIVITY (-PROFESSIONAL OVER-RIDE)

In 1990 the inventors of the LSI instruments published a paper that outlined a series of interrelating principles associated with case classification designed to ensure that the risk assessment of offenders determined the "level, targets, and type of rehabilitative effort" (Andrews et al., 1990: 19-20). By synchronising the risk classification of offenders with how correctional services are delivered Andrews and his colleagues contend that the rehabilitative effort can reduce the rate of re-offending, placing limits on professional discretion in case management. The LSI family of instruments were not designed for determining placement in one part of the criminal justice system or another, but for ensuring that the level of intervention is matched to the offender's anticipated risk of re-offending and their profile of criminogenic needs.[27] These instruments have a mobility that enables them to operate in diverse carceral and community settings and that can be used by diverse forms of authority and expertise.

The structuring of the risk-need-responsivity principles across the instrument's domains of operation (risk assessment and case management) concretise the abstract technical schema developed by Burgess (1928a, b) at a higher level of functioning. The Burgess expectancy tables had the capacity to classify the level of risk and inform parole authorities that an offender's risk score meant that they had a percentile (e.g., 90%) chance of re-offending to influence parole decision-making; however, there was no operational domain in the instrument that aligned the risk classification with the nature of intervention. There was an implied risk principle where it was hoped that a parole authority would not release an inmate if they had a high probability of re-offending and that a parole agent would match the level of supervision in the community to the risk classification. The instrument's intended regime of functioning remained contingent upon the formulation of policy and the discretion of parole authorities.

Andrews and his colleagues have installed discursive rules, embodied most clearly in the LS/CMI instruments, that establish a convergence of functioning between risk classification and case management to regulate risk case management. The principles of "case classification" are the primary enunciative function of the LS/CMI instruments, establishing a recurrent causality between the internal technical operations of these instruments, amplifying the limitative parameters under which rehabilitation is enacted. By establishing greater consistency and convergence across these domains, instruments like the YLS/CMI function with a relative degree of autonomous functioning in the milieu in which they operate (Simondon, 2017: 75). The intended schema of functioning concretised in these instruments establishes a meeting point with the penal milieu where the technical object "is thus its own condition, as a condition of

existence of this mixed milieu which is simultaneously both technical and geographical" (Simondon, 2017: 58).

Using Simondon's (2017: 63) criteria, the LS/CMI instruments function as a "technical individual" where the "associated milieu exists as a condition of functioning" providing risk information that is necessary for their functioning. This concretises a modulating process where risk information is reciprocally exchanged between the instrument's operational domains and human operators. These operators make sense of disparate risk information about the lives of offenders that is modulated through the coding mechanisms concretised in the instrument. The overall regime of functioning is individualised as fluctuations in one element of functioning promotes the functioning of another element (e.g., a shift in the anticipated level of re-offending at the time of re-assessment and the reconfiguration of the nature of risk prevention). The instrument and its rules of case classification structure each technical operation (e.g., the calculation of the total risk score, the targeting of elevated criminogenic needs and so on) as a calculative operation that occurs at the intersection of disparate informational trajectories. Each calculation registers a signifying informational threshold, generating a risk score or a decision about how to intervene. Each operation is an individuation in process that establishes a synergistic relation between the risk assessment and the supposed rehabilitation of offenders. These operations are described in detail for the YLS/CMI-AA in Chapter Four.

The individualisation of risk case management can only synchronise the risk assessment with the mode of intervention by imposing the principles for case classification into the instrument's overall regime of functioning. The rules function as a strategic use of power rather than a technical operation. I understand the rules described below as attempting to minimise or eliminate conflict that emanates from the associated milieu(s) that might undermine its instrumental prioritisation of reducing the rate of re-offending by targeting criminogenic needs. Without the rules there is no necessary relation between these two operating domains, it is possible that they may operate at two different orders of human and technical functioning. The developers' classification principles articulate a will to control all rehabilitative efforts within the correctional milieu considered in its totality across its variegated fields of intervention. This saturates technical-human relations within a limitative actuarial operational structure that it is only capable of reproducing the patterns linked to its operative structure (Mackenzie, 2017: 84). These risk/need/responsivity principles are described below.

2.4.4.1 THE RISK PRINCIPLE

Under the risk principle incorporated in the risk assessment,

> Higher levels of service are reserved for higher risk cases […]. Intensive service is reserved for higher risk cases because they respond better to intensive service than to

> less intensive service, while lower risk cases do as well or better with minimal as opposed to more intensive service. (Andrews et al., 1990: 20)

Matching the level of intervention to the anticipated level of risk is self-evident. In community settings this principle is translated into matching the amount of supervision and risk surveillance to the level of risk imposing a behavioural management structure that enhances the costs of re-offending. For example, the LSI-R classifies risk according to three levels for male and female offenders on community orders: minimum risk, medium risk, and high risk, rationalizing that it is cost-effective and appropriate that low-risk offenders receive no supervision or treatment (Andrews and Bonta, 2003: 4). The principle is intertwined with the "need principle" that determines the "targets and types of services employed", thus intensifying the level and density of the risk intervention for those individuals classified in the medium- to high-risk categories (1990a: 29).[28] The developers claim that high-risk offenders "respond better to intensive service". This purportedly constitutes them as a "transformative risk subject", a rational choice actor capable of change and self-regulation but whose self-perceived needs may be excluded from the rehabilitative effort because of the instrument's risk parameters that specify which risk domains are the legitimate target of intervention (Hannah-Moffat, 2005: 34, 38-40).

Andrews and his colleague's conception differs from many other actuarial accounts that characterize high-risk offenders as the "worst of the worst", the persistent offender, someone viewed as not being amenable to change and thus more likely to be targeted for incapacitation.[29] Their claim is even a point of departure from Burgess or the Gluecks who considered that offenders predicted to have the greatest chance of re-offending should be incapacitated.[30] The LSI instruments have been designed for modulating case management in prisons or youth detention, legitimating intense levels of behavioural management and cognitive behavioural programs as well as the transportation of these techniques along with high levels of supervision into the risk management of high-and medium-risk offenders in the community. The necessity of re-assessing the level of risk over time may support a fluid conception of the risk subject (Hannah-Moffat, 2005: 41); however, the mechanism for re-assessing the level of risk over time places the target of intervention under a more continuous form of assessment where the failure to change or the exacerbation of circumstances may justify intensifying the level and density of intervention even further. This is discussed in greater detail in Chapter Four in the section on metastability in risk classification and case management.

2.4.4.2 THE NEED PRINCIPLE

Under the "need principle" incorporated in instrument's case management operations:

> Targets of service are matched with the criminogenic needs of offenders. Such needs are case characteristics that, when influenced, are associated with changes in the

> chances of recidivism. If reduction in the chances of recidivism is an ultimate goal, the more effective services are those that set reduced criminogenic need as intermediate targets of service. (Andrews et al., 1990: 20)

The need principle matches the goals and intervention strategies to the elevated risk domains identified in the risk assessment. This principle is not novel as both Burgess (1936) and the Gluecks (1970, 1972) developed risk management schemas that targeted elevated levels of risk identified in the risk items used in their prediction instruments.[31] Andrews and his colleagues define these criminogenic needs as "dynamic attributes of offenders and their circumstances that, when changed, are associated with changes in the chances of recidivism" (Andrews et al., 1990: 31; see Figure 3.2 Part A). They are sharply differentiated from "needs", where the developers claim that while optimizing human needs and promoting self-determination are important modes of therapeutic intervention, they should not supersede the treatment of criminogenic needs in any crime prevention program (Andrews et al., 2011: 737). They go as far as saying that facilitating human needs may generate criminogenic effects.[32] The developers also insist that, by re-assessing the level of risk in relation to the risk domains over time, the predictive criterion validity will be improved over that of the initial assessment of risk. At the time of making this claim they provided limited and piecemeal empirical support claiming that re-assessments (e.g., after six months) of antisocial attitudes, antisocial associates, anti-social personality, trouble at school/home and drug use improved the prediction of recidivism compared to the initial anticipated level of risk (Andrews et al., 1990: 33-34).

These claims are used strategically to support Andrews and Bonta's explanation of criminal conduct, to establish a boundary between what is a legitimate target for intervention and what is not and to demonstrate that the effective targeting of criminogenic need can demonstrate that change is possible. The re-assessment element of the instrument's operations establishes a recurrent causality of relations between the developers' theoretical claims, the modulation of risk case management and the capture of evaluative data. It is part of the licensing agreement that information about re-assessment is a component of the institution's data storage infrastructure enabling its deployment in evaluative research about the instrument's efficacy, while pre-determining the risk parameters that are used to evaluate the effectiveness of the instrument or any risk interventions under scrutiny. The idea that the accuracy of the anticipated risk will be improved over time suggests a more implicit risk surveillance and behavioural management strategy that relies upon a more continuous monitoring of the offender and their circumstances over time to refine the assessment of risk and adjust the mode of intervention accordingly. The targeting of the risk and needs principles to a large segment of medium- to high-risk individuals coupled with the principle of re-assessment indicates that the calculation of risk is provisional rather than determinate.

Given claims that the strongest predictors of re-offending are linked to anti-social attitudes, anti-social personality, and identification with anti-social peers (Gendreau et al., 1996; Andrews and Bonta, 2010), these criminogenic needs are intimately connected with a set of preferred interventions, in particular the use of cognitive behavioural programs. These programs assume that offenders have a deficit thought process that prevents them from benefiting from pro-social opportunities in education, vocational training, and work Hörnqvist, 2010: 69). Anti-social thoughts, anti-social beliefs, anti-social values and anti-social traits such as a lack of remorse and a lack of self-control become the target for intervention. These programs deploy a mode of intervention that presupposes active agency and is consistent with an emphasis on free will, individuality, choice, and responsibility while denying the structural inequalities in which offenders are situated (Kendall, 2002: 186). Kendall argues that the rules for effective classification provide a framework that uses highly structured modes of behaviour management that are rooted in a cognitive behavioural model.

These programs began to be developed in the early 1970s by Canadian researchers who belonged to the Ottawa School in prototypical research in support of "what works" that rose to prominence in the 1990s (Kendall, 2002: 191-194; Robinson, 2001: 237). This research began by conducting evaluations of rehabilitation programs in institutional and community settings to demonstrate that these programs could reduce recidivism (Gendreau and Ross, 1979; Ross and Gendreau, 1980). They later began identifying which programs worked and which ones fail, concluding that "effective" programs targeted offender behaviour and their cognitions (Ross, 1980). The researchers understood both youth and adult offenders as having deficit cognitive skills that placed them at risk of developing an anti-social lifestyle (Ross and Fabiano, 1980). This work eventually resulted in the development of the Reasoning and Rehabilitation program that was implemented by probation officers and that targeted high-risk offenders, demonstrating that cognitive training can lead to a major reduction in recidivism (Ross et al., 1988).[33]

2.4.4.3 THE RESPONSIVITY PRINCIPLE

Under the "responsivity principle" embedded in these instruments:

> Styles and modes of service are matched to the learning styles and abilities of offenders. A professional offers a type of service that is matched not only to criminogenic need but to those attributes and circumstances of cases that render cases likely to profit from that particular type of service. (Andrews et al., 1990: 20)

The developers considered that responsivity to the offender is contingent upon the successful application of the risk and needs principles. In their original formulation, practitioner/service delivery responsivity consists of two ingredients. Firstly, those working with offenders adopt an interpersonal stance of warmth and respect, demonstrate prosocial attitudes, engage

enthusiastically with the offender, and make use of authority without being dominating. Secondly, more specific strategies for adapting a program to the characteristics of the offender are identified to improve the chances of their active participation in the program (1990: 37-41).[34] Matching the mode of delivery to the offender assumes both client resistance and deficit functioning as barriers to risk prevention. The responsivity principle combats an array of factors spanning the degree of co-operation or resistance to participating in an imposed offender program, cultural difference, gender, maturity, verbal capacity, anxiety levels, disabilities that may include cognitive ability and mental health issues.

The developers' articulation of the responsivity principle has been extended further as a component of their purported "fourth generation" instruments such as the LS/CMI (Andrews et al., 2004a; Hoge and Andrews, 2011). Both the LS/CMI and the YLS/CMI strive to integrate risk assessment and case management into a seamless "evidence-based system" "that guides and follows service and supervision from intake through case closure" (Andrews et al., 2006: 8). The LS/CMI was developed to streamline the LSI-R by reducing the number of risk items used in the instrument and profiling risk across Andrew and Bonta's "big four" and "moderate four" risk domains; extend the assessment of criminogenic needs to also include specific risk-need factors, institutional factors, issues such as mental and health concerns and responsivity factors; and integrate the assessment process with offender management (Bonta and Wormwith, 2007: 144).

The LS/CMI provides a case management infrastructure that integrates information for all case management plans, client activities, client behaviour and client outcomes into a standardized format that can be stored and automatically retrieved from a client information database. A template integrates information from the risk/need assessment and the process of offender management into a single document, the Case Management Protocol (Andrews et al., 2004c). This data infrastructure was designed to achieve greater practitioner compliance with adhering to the principles of risk, need and responsivity across the assessment and case management domains of operation as well as facilitating that client information "is generalizable and portable" (2007: 147-148).[35] This later function establishes a mode of stockpiling all prior information about each individual enrolled in the risk population in a standard format that can be used irrespective of the service delivery model or setting, and that can be more quickly relayed from one setting to another without friction.[36] This data-driven infrastructure operates as a networked, system-wide apparatus of anticipatory control that primes and automatically programs a network of technical-human relations.

The coupling of the operations of the instrument with the integrative data infrastructure establishes an actuarial system of regulation that can more effectively achieve a convergence of

functions across this network. Simondon (2020: 666) defines modulation as being an operation that actively converts energy by putting an operation and a structure into relation through an intermediary state or middle ground to establish an active process of technical individualisation. The data infrastructure functions as a modulator that actively structures the ongoing operative processes of risk calculation and risk management for the duration of a case, in events where cases are transferred across penal sites (e.g., from community to carceral control) and, cases where an offender returns to the criminal justice system after committing a new offence. In this coupling there is a normalisation of thresholds of functioning across these domains, strategically designed to optimise biopolitical security by establishing homeostatic relations across the network by reducing the margin of indeterminacy across diverse operational processes.

I contend that the design that drives these "fourth generation" instruments articulate a desire for pre-emptive cybernetic control. Bonta and Wormwith (2007: 148) consider their risk management scheme as "lend[ing] itself more readily to automation than schemes that are theoretically, functionally and technologically unrelated and are forced together after the fact". Clearly such a vision of governmental control does not have the capacity for complete automation as the network of relations established is reliant upon humans who work across a network of settings. There are delays in communication between network centres because of the reliance upon human labour in the calculation, recording and transmission of risk information that prevents the kinds of pre-emptive automated systems that operate in real time that are so prevalent now. Nonetheless the logic behind such a level of governmental control is cybernetic in character. Cybernetics is broadly concerned with relatively autonomous machines of control (Beer, 2004: 855-857).[37] Weiner (1961) conceived cybernetics as a mode of deep communication and control capable of functioning as a total system that incorporates any kind of probabilistic operation whether it be biological, climatic, economic, societal, or political. He distinguished "trivial" machines that have been designed to generate specific outcomes within singular contexts, and non-trivial machines that establish a probability model of estimation or valuation capable of quantifying the complexity of the system as a whole to ensure that the total operating environment has the requisite variety of informatic elements to enable these elements to "intercommunicate" and achieve a stated degree of autonomy (Beer, 2004: 857-858; Weiner, 1961: 155-158).

In Weiner's ambitious formulation, machines and their ensembles could be programmed at a second-order level of functioning capable of discerning anti-homeostatic forces that threatened the homeostasis of the human organism. He asserted that this could be realized by building learning machines that could process the "long past" of behavioural outcomes (the sum-total or memory of all first-order linear data), and then use non-linear statistical measures for reprogramming pre-emptive governmental activity to influence outcomes. The data

infrastructure envisaged by Andrews and his colleagues does not operate at this second-order level of functioning, but it does model itself on this vision of control. Its anticipatory data-driven infrastructure enables a higher degree of consistency of the aggregate risk management of the offender population by more precisely locating any individual offender's risk location at any given moment over the course of an offender's intake through to case closure, in the transfer of cases across penal settings, and maintaining a state of preparedness for anticipatory lines of preventive action by stockpiling risk information that can be relayed across the "long past" of an offender's involvement in the criminal justice system. The values and norms that drive this operational regime are concerned with minimising alternate informational forces that might shape intervention, as well as minimising delays in the transmission of risk information. In this way conditions are optimised for the effective capture of a moving target to determine their risk location and take preventive action more precisely. Networked actuarial control establishes more homeostatic relations, as well as enabling audits of the overall operations of the system and its sub-domains as a feedback mechanism for reconfiguring practice in greater alignment with programmed objectives.

2.4.4.3.1 THE PATH OF MINOR IMPROVEMENTS

Can the modifications made to a fourth-generation instrument such as the LS/CMI be understood as a significant change in how the LSI family of instruments function? One might think that the movement towards an automated system advances the progress of the technical object; however, Simondon (2017: 17) is clear that automatism does little to advance the technicity of a technical object as it limits potential by over-determining how the technical ensemble operates. By seeking to control the overall regime of operation of these instruments in alignment with their original design to modulate risk case management by the instrument's profile of criminogenic needs, they operate more like a closed technical system despite minor modifications to the instrument's operations that incorporate additional risk/need factors and special responsivity considerations. Bonta and Wormwith (2007: 144) claim that the expansion of the client characteristics assessed in the LS-CMI "represents a significant departure from their earlier instruments"; however, the addition of these factors that might be conceived as "needs" do not introduce any structural reform to the overall regime of operation to bring about an "essential, discontinuous improvement in the internal schema of the technical object" (Simondon, 2017: 43).

Figure 2.3 The major components of the LS/CMI (number of items) (Source: Bonta and Wormwith, 2007: 145)

A. *General Risk/Need factors* (43)

Criminal History (8)	Companions (4)
Education/Employment (9)	Alcohol/Drug problem (8)
Family/Marital (4)	Procriminal attitude/Orientation (4)
Leisure/Recreation (2)	Anti-social pattern (4)

B. *Specific Risk/Need Factors* (35)

Personal problems with criminogenic potential (14)
History of perpetration (21)
Sexual assault (7)
Other forms of violence (7)
Other forms of anti-social behaviour (7)

C. Prison experience: institutional factors (14)
D. Other client issues (21)
Social, health, and mental health (21)
E. Special responsivity (11)
F. Case management plan
Programme targets and intervention plan
Criminogenic needs/non-criminogenic needs
G. Discharge summary
Type of discharge/discharge summary narrative

Figure 2.3 Part B identifies several risk-need factors (personal problems with criminogenic potential, sexual assault, a history of violent behaviour and so on) that "are of such importance that they 'override' the quantitatively derived risk level that is derived from the general/need score" (Bonta and Wormwith, 2007: 144-145; Andrews et al., 2004b: 21-23). These criminogenic factors are considered as idiosyncratic and case specific but need to be considered in addition

to the instrument's assessment of criminogenic need.[38] By including a more extensive checklist of responsivity factors (Figure 2.3, Part E) a more comprehensive and strategic approach is taken to foster an individual's compliance with the interventions imposed on them. The developers have incorporated the "most problematic" non-criminogenic needs into the assessment and case management process to ensure the targeting of criminogenic needs is effective rather than on the recognition that targeting these needs by themselves will reduce re-offending (2007: 146). This relaxing of earlier formulations of the need principle is premised on the assumption that this will amplify the instrument's capacity to lower rates of recidivism, while establishing a rule that the "number of criminogenic needs targeted (must exceed) the number of non-criminogenic needs targeted" (Andrews et al., 2006: 18).

The incorporation of additional factors into the risk assessment and the integration of the assessment and case management data infrastructure is a compensatory form of technical individualization that makes adaptations to supplementary (non-quantified) domains of the instrument to ward off outside tensions that may threaten adherence to the targeting of criminogenic need. This occurs because of several challenges to a strict adherence to targeting criminogenic need, some of which are openly acknowledged by the developers, others that are obliquely acknowledged, and some that are largely ignored as in the case of race and the plight of First Nation peoples. At the empirical level, meta-analytic evidence that the LSI family of instruments do not perform as well in predicting violence or other more serious offences compared to general recidivism are accommodated by the developers by acknowledging the necessity of multi-modal risk assessments. Challenges that these instruments discriminate in relation to gender, race, ethnicity, socioeconomic status, or disability generating more punitive interventions or inadequate responses to their needs (see Chapter Five and Seven) are indirectly accommodated by legitimating the inclusion of these conflictual relations as responsivity factors. For example, the LS/CMI has been marketed as being "gender-informed",[39] warding off practitioner resistance to complying with the targeting of criminogenic needs given concerns that this will fail to adequately address factors associated with gendered pathways into crime.[40] Fourth generation instruments use responsivity checklists that identify female health, child abuse and cross-gender victimization as well-being or therapeutic needs that justify "gender-sensitive treatment programs". This modification to the instrument is a relatively minor compromise in response to conflicting informational forces that emanate from the wider collective milieu. They do not alter its elementary operative structure that continues to target criminogenic need as they primary priority to combat recidivism.

Andrews et al. (2006: 16-17) partially acknowledge the intersectionality of economic hardship and these gendered experiences as being "distal" relations that justify referral to programs that address "the problems of the poor" or placement in a women's refuge. At the same time, they

are at pains to downplay the salience of these forces as being primary relations in recidivism: they are "possibly" "moderators" that may explain some of the variation in the prediction of recidivism that warrant future meta-analytic research; socioeconomic indicators are strongly associated with the "big four" predictors of recidivism; (anyway) some of these distal issues are incorporated in other risk domains in the instrument (such as its financial and accommodation domain); and, an active denial that issues like homelessness or financial hardship are anything more than "acute" or transitory conditions rather than being long-term or permanent life conditions. The inclusion of a vulnerability checklist does not resolve these tensions and conflicts, it defers these challenges to augment the hegemonic powers of the LS/CMI to anticipate and control dynamic criminogenic needs.

In addition to the "distal" structural relations of gender and ethnicity/cultural difference, the responsivity checklist for the most recent version of the YLS/CMI 2.0 (Hoge and Andrews, 2011)[41] incorporates aleatory life conditions such as financial/accommodation problems and immediate health difficulties; forms of disability;[42]mental health issues linked to suicidal ideation, attempted suicide, bullying and threats to the self; witnessing domestic violence, being neglected, or sexually or emotionally abused; histories of significant anti-social conduct;[43] individual barriers to participation in programs;[44] and indicators of client resistance.[45] Whether these factors are barriers to successful intervention, exacerbating risk factors that warrant exercising more intensive controls on the individual, or forms of resistance that necessitate combative tactics like motivational interviewing, cognitive behavioural therapy, curfews or non-association requirements, their inclusion in the instrument's assessment inevitably justifies the targeting of multiple risks and needs. This amplifies the intensity and density of interventions significantly. By providing a minor accommodation to the multifaceted dimensions of individual "need", it is increasingly difficult to distinguish risk from need. One effect of this is an extension of the authority, logistics and mechanism of actuarial risk case management deeper into the community as traditionally non-justice/health and welfare agencies and forms of expertise become enlisted into the mission to combat criminogenic needs. When individuals are referred to services for non-criminogenic needs the control structure of the technical ensemble mobilises these service providers under a shared or imposed collective concern with the prevention of criminogenic need. At the same time, the tension between managing "criminogenic need" and "need" remains unresolved.

The assessment of responsivity factors is a technique of discernment that has the propensity to divide individuals that share medium- to high-risk "criminogenic needs" along binary channels modulated by whether the offender is responsive or nonresponsive. This legitimates alternate modes of intervention that are far more incapacitating or debilitating for the "non-responsive" target as well as individuals who have chronic disabilities and young people whose brains are

still developing and who are unable to meet the demands of responsible self-management. This exposes the unresponsive penal subject and, in many instances, difference itself to new forms of immobilisation, control and debilitation that cut across pharmacological intervention, medical and mental health segregation, quarantining from anti-social influences within the community milieu, specialist programs to extinguish behaviours, and the instantiation of long-term management specialist programs for chronic conditions.[46] Predicated on an adult white model of rationality and self-regulation, the developers' case classification schema for maximising reductions of criminogenic need by adjusting the intervention(s) to responsivity issues reveals its racialized biopolitical dimensions as tactics are introduced for assimilating, neutralising or eliminating difference into the dominant treatment paradigm that is structured around the prevention of criminogenic risks.

2.4.4.4 PROFESSIONAL OVERRIDE

The principle of "professional override" embedded in these instruments stipulates that:

> Having considered risk, need, and responsivity, decisions are made as appropriate under present conditions. (Andrews et al., 1990: 20)

This affords a small degree of professional autonomy that allows the risk case manager to override the risk principle that matches the total risk score with the level of intervention. The total risk score can be adjusted up or down to match the anticipated risk more effectively to the level of intervention. In the developers' rationale, professional over-ride is used to reconfigure risk interventions when "a generally minor risk factor is major" for a particular offender which would elevate their risk classification (Andrews et al., 2011: 743). This can be understood as an immanent and eruptive risk (e.g., idiosyncratic problems with criminogenic potential) that lies outside the instrument's risk parameters that target criminogenic need and that undermine its efficacy in combatting recidivism without more immediate attention. Professional over-ride is legitimated in cases where the assessor is aware of rare risk or protective factors that provide sufficient grounds for mediating the case's risk classification and its implication for intervening (Meehl, 1954: 24-26; Grove and Meehl, 1996). These kinds of risk factor do not meet the threshold of statistical significance that has been encoded into the instrument as a mass phenomenon, but that nonetheless justify overriding other data in the instrument (see Meehl, 1954: 24-26). This over-ride mechanism does not undermine the operative structure of the instrument, rather it assists in reducing the margin of predictive error to establish greater control over the risk management of offenders (see Meehl, 1954: 117). At the same time, by enabling the exercise of professional judgement in exceptional cases, practitioner resistance to the routine use of the instrument is minimised to some extent. While there is evidence that risk

case managers may resist aspects of risk assessment and case management in practice (e.g., see Fitzgibbon, 2007; Bullock, 2011; Phillips, 2016), the regulatory operations of instruments such as the YLS/CMI are amplified in penal policy milieus that align their case management policies and supervisory relations between case managers and line managers in synchrony with the operations of the instrument. This is analysed in detail in the next chapter in relation to the implementation of the YLS/CMI in Youth Justice NSW.

2.5 CONCLUSION

In this chapter I have begun to provide an account in relation to the question about how the YLS/CMI mediates the risk calculation and determination of case management of young people by considering the operations of the LSI instruments more widely as this instrument shares the same elementary structure. The developers of the LSI instruments have devoted considerable energy to establish a planned security milieu, where the instrument itself provides the ground for modulating an evidence-based policy and practice in its intended associated milieu. These instruments provide a functional schema to plan the correctional milieu across its operational domains: the classification of the level of risk, the profiling and targeting of criminogenic needs, and the auditing of an offender's capacity for behavioural change, measurable by shifts in the total risk score and the risk scores on each of the criminogenic domains of the instrument. Information can be stockpiled in a system-wide offender database, where an electronic file can easily be retrieved to audit the case, review whether risks have been reduced, amend the plans for intervening and quickly transfer risk information and case responsibility to other authorities. This regime of functioning establishes a principle of metastability into risk case management to implement an intensive and dense network of biopolitical regulations that are managed within "a multivalent and transformable framework" given a series of possible, but nonetheless uncertain, future events (Foucault, 2007: 20). Foucault described the milieu as "the space in which a series of uncertain elements unfold" and that use mechanisms of security to organise the actions of others at a distance across the mobile elements of the technical ensemble under examination (2007: 20-21). The case classification principles for "effective rehabilitation" establish the primary enunciative function of these instruments that regulate and limit how rehabilitation is undertaken.

This chapter has also examined the developers' "third" and "fourth" generation instruments to consider to what extent these modifications to the LSI instruments have transformed their regime of operations at a higher level of functioning. While these instruments have succeeded in concretising a mode of functioning that synchronises the operations of risk assessment with the ongoing case management of offenders, the modifications made in the LS/CMI and the YLS/CMI are of a relatively minor order. The modifications that accommodate specific risk/need

factors and responsivity factors and that establish a system-wide data infrastructure have been made to exercise greater control over how interventions are managed across the different sites where an offender might be located over time. Even though additional criminogenic needs, non-criminogenic needs and special responsivity factors have been incorporated into the case management of young people, these factors have been included to optimise the targeting of criminogenic needs, which remain the prioritised norms of action for risk case management. These modifications have not altered the elementary operative structure of these instruments and its core priority of reducing the rate of re-offending. “Fourth generation” instruments were designed to ensure greater practitioner adherence to the case classification principles. The standardised anticipatory data infrastructure establishes a system-wide operating structure that actively modulates and amplifies the relay of risk intelligence data across a network of actuarial sites to optimise the combative relations of risk neutralisation and preventative action. The hegemonic targeting of criminogenic needs becomes integrated across a network of state and community authorities working in offender programs, health, and welfare services. By adapting the instrument to undertake a more multi-modal assessment of criminogenic need, other elevated risks, strengths and needs, a pre-existing tension is attenuated between addressing criminogenic need and need more broadly defined. At the same time the more systematic attention to a young person’s vulnerabilities legitimates more intensive interventions that exceeds the interventions justified on targeting criminogenic needs, legitimating forms of immobilisation and preventive action, especially on unresponsive penal subjects. The next two chapters examine the operations of the YLS/CMI more closely and how the interpolation of this instrument into case management has restructured youth policy and practice.

CHAPTER THREE: INTERPOLATING ACTUARIAL RISK MANAGEMENT INTO YOUTH JUSTICE IN NEW SOUTH WALES, AUSTRALIA

3.1 INTRODUCTION

This and the next chapter concentrate on the introduction of the Youth Level of Service/Case Management Inventory (YLS/CMI) into Youth Justice NSW (YJ) in 2002 to describe and begin to evaluate how this has impacted on policy and practice over the next 20 years. In this chapter I provide a critical account of the way in which YJ's case management policy was adapted to support the introduction of actuarial risk case management and how this has propagated over the core operational domains of YJ. The chapter begins by describing the legislative and policy milieu prior to the introduction of the instrument. This provides an overview of the rationales and practices that continue to inform the way in which children and young people are punished, and that have been challenged by the state's commitment to the aggregate risk management of young people. By the late 1990s the legislative and policy framework in NSW had coalesced along a trajectory of intensifying youth decarceration and the institutionalisation of youth diversion. Most young people were then, and continue to be, diverted away from the Children's Court using police warnings, formal cautioning, or referrals to youth justice conferencing (YJC). Of those young people found guilty of criminal offences, the vast majority are sentenced to community-based orders while a much smaller proportion are sentenced to youth detention. YJ is responsible for the control of those young people sentenced through the Children's Court as well as co-ordinating YJCs.

The Youth Level of Service/Case Management Inventory-Australian Adaptation (YLS/CMI-AA) was introduced into community supervision and case management in youth detention in 2002, dovetailing with the state's more punitive approach to youth offending over the course of the 1990s and the first decade of the 2000s. The instrument was designed to aid an array of youth justice professionals to assess the level of risk of re-offending and ensure that the development of a case plan is linked to the instrument's dynamic criminogenic risk domains (Hoge and Andrews, 2003: 1). After considering some of the tensions that actuarial justice introduces into the Youth Justice milieu, the remainder of the chapter provides an overview of how the prioritization of actuarial risk assessment and case management has translated into policy protocols in remand and bail management, community supervision, case management in youth detention and post-release, and after 2010, in youth justice conferencing.

My analysis is bounded by the operations of the YLS/CMI-AA within the key domains outlined above, where YJ takes the lead responsibility for the rehabilitation and control of young offenders. It is acknowledged that there are many assessment tools used in youth justice, including actuarial instruments for anticipating the risk of re-offending in relation to violent offences and for classifying the threat to security in youth detention to place young people within its network of youth detention centres. In alignment with Simondon (2017: 26, 28-29) I contend that these instruments have their own "individuality" which necessitates a careful examination of their specific ontogenetic lineage that is beyond the scope of this thesis.

3.2 THE CONTEMPORARY YOUTH JUSTICE PENAL LANDSCAPE

In contrast to adult jurisdictions where imprisonment rates continue to rise in Australia, the youth detention population has been on a long-term trajectory of decarceration since the latter half of the 1970s (Goldson et al., 2021: 26-29). In NSW, the youth detention population is now at its lowest level ever, where roughly 207 young people are in detention on any given night (AIHW, 2021b: 17). Under the sentencing hierarchy established in s. 33 of the *Children (Criminal Proceedings) Act, 1987*, sentencing to a control order is a measure of last resort, in alignment with Article 37 (b) of the *Convention of the Rights of the Child, 1990* that stipulates that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". Young people who commit summary offences or indictable offences that can be dealt with summarily are sentenced under the penalties prescribed in s. 33. If sentenced to youth detention, the length of the order cannot exceed two years. In cases of serious indictable offences, those found guilty are sentenced to a term of imprisonment where an order can be made directing that the whole or any part of the terms of the sentence be served as a youth offender (see s. 18 (1) and 19 (1) *CCPA, 1987*). In these cases, the young person is placed under the control of the minister administering the *Children (Detention Centres) Act, 1987.*

Recent data indicates that just over 4,000 young people in NSW were found guilty at court in the last year, and the majority were sentenced to a community-based order (39.54%);[1] 5.13% are sentenced to youth detention; just under 19% have their charges dismissed with or without a caution; and 8.7% receive a monetary fine, while roughly 1.6% do not have a conviction recorded or are given a conviction with no further consequences (BOCSAR, 2022).[2] Young people on community-based orders (Community Service Orders, probation, and good behaviour bonds) have restrictions on their freedom, they must comply with imposed rules including reporting regularly to a youth justice case manager, attending school or vocational education, treatment, and offender programs, complying with restrictions "designed to promote rehabilitation and contain risk" (Klingele, 2013: 1022). In addition, young people in custody can be released before

completing their sentences, by being released on parole. Post-release supervision serves both rehabilitative and surveillance purposes by providing access to programs and other supports while imposing restrictions designed to improve public safety and increase the detection of crime (2013: 1026). Under Phelps's (2017: 57) typology of how the state punishes, that part of the youth justice apparatus that controls young people committed through the courts is a modality of "managerial control". NSW operates as a regime with highly constrained imprisonment rates and considerably higher rates of community control.

Youth justice reform in the 1990s established a diversionary scheme operationalised under the *Young Offenders Act, 1997* that now channels roughly 80% of young people away from the Children's Court using warnings, cautions and Youth Justice Conferences (YJCs)(BOCSAR, 2022). Most young people in NSW who commit offences are formally sanctioned by the police or traffic and transit authorities. More young people are issued a monetary fine (42.3%) than any other sanction. Of the young people who are proceeded against by the police most are issued a warning (23.9%), then proceeded against to court (18.5%), and then give a formal caution (13.5%), while only 5.5% of young people are referred to a YJC. The contemporary youth justice legislative and policy milieu is constituted as a vast diversionary apparatus aimed at channelling young people away from the courts (the "shallow end" of the system) and a considerably smaller control apparatus that manages most young people in the community (the "deep end").

3.2.1 CONVERGENCE AND CONFLICT IN YOUTH JUSTICE

The YLS/CMI-AA was formally introduced into Youth Justice NSW's operations in October 2002. NSW's investment in actuarial risk assessment and case management occurred at a conjunctural point that intersected with the institutionalisation of youth diversion over the course of the 1990s in Australia, and an ongoing trajectory of intensifying youth decarceration that remains evident in the statistics outlined above (Goldson et al., 2021: 29). This later trend had developed over the course of the 1980s, and by 2002 the national rate of incarceration had fallen to its then lowest level at 18.5:100,000. While the numbers of young people sentenced to detention significantly declined, the first decade of the 2000s witnessed a substantive increase in young people on remand, a trajectory that has continued into the present across all of Australia (2021: 40-41).

Since the 1970s, in many Western youth justice jurisdictions youth justice policy has distanced itself from welfare rationales based on meeting individual needs and become a more hybridised framework of conflicting rationales and regimes of operation that deploy "justice" rationales that are more concerned with the offence rather than the offender, as well as being concerned with retributivism, and the responsibilisation of young people, their families, and non-state

agencies and organisations (Muncie, 2005: 36-40; see also Muncie and Hughes, 2002). Throughout the late 1970s and 1980s in Australia there was intensified critique of the child welfare system that occurred in "a political climate marked by concern about law and order, growing awareness of the importance of legal rights and increased uncertainty about the efficacy of welfare services" (Seymour, 1988: 163).

The older welfare legislation and its penal welfare sanctions extended the reach and intensity of state control indefinitely rather than achieving its stated intention of preventing juvenile delinquency, often using highly coercive mechanisms and where the welfare model of diagnosis and treatment was increasingly challenged.[3] In NSW this culminated in legislative reform which separated the governance of child protection from the governance of children and young people convicted of criminal offences (see *Children (Care and Protection) Act, 1987 (NSW)* and *Children (Criminal Proceedings) Act, 1987 (NSW)*). Under s. 6, the *Criminal (Children's Proceedings) Act, 1987* afforded recognition of young people due process rights, responsibilised them for their offence, acknowledged their developmental support needs and sought to maintain or reintegrate them in community to sustain family and community connections. Pratt (1989: 239) describes this "justice" rationale as possessing a will to impose a retributive punishment in "a precise and restricted form: least restrictive intervention; minimum programs rather than maximum; community-based rather than custodial sentences". Under this biopolitical regime supervision becomes a method of controlling the offender in the community guided by the question "how much control does this offender deserve in the light of the circumstances of the offence (they) have committed?" (Morris et al., 1980: 72, cited in Pratt, 1989: 239).[4]

Since the 1990s, police cautioning spread across all youth justice jurisdictions in Australia, becoming the major mechanism of diversion aimed at channelling young offenders away from the courts to limit the criminogenic effects of criminalisation (Polk, 2003: 2). Alternatives to the Children's Court have been piloted in NSW since the 1970s, many of these initiated by the police.[5] Pratt (1989: 246) has argued that in the face of rising levels of youth unemployment in the wake of the post-industrial economy, there was an intensification of social policing initially evident in innovations such as cautioning, re-integrative shaming conferences, crime prevention committees and youth-focused inter-agency partnerships. These security mechanisms obligate a network of authorities to gather crime intelligence data and make plans to combat crime and disorder. Risk surveillance and regulation has increasingly extended into previously neglected or hidden areas, including pre-crime initiatives that target "potential delinquents" for preventive campaigns (Pratt, 1986: 218-219). In 1997 the *Young Offenders Act, 1997 w*as introduced after almost a decade of reform efforts aimed at regulating police discretion at the gatekeeping level, emphasising the principle of diversion as an alternative to prosecuting young people in the

Children's Court and introduced conferencing as an intermediate intervention co-ordinated by YJ (Chan, 2005: 11).

3.2.2 YOUTH OFFENDER MANAGEMENT

In 1994, YJ began describing its corporate mission as "breaking the crime cycle" (Department of Juvenile Justice, 1994: 5).[6] Over the course of the 1990s its service delivery objectives for managing offenders on community supervision and in youth detention shifted from a general focus on the needs of young offenders to support their re-integration into the community towards the use of "evidence-based" offender programs that demonstrated that they could reduce levels of re-offending in the community. By 2004 the Department's corporate plan rationalised that most young offenders could be "effectively supported" in the community using interventions that "focus on the offending behaviour that brings a young person before a court and on factors that contribute to that behaviour" (DJJ, 2004a: 3). The vision of "striving to break the crime cycle" that drove intervention assumed that those who enter the "deep end" of the youth justice system are more likely to be repeat offenders, where incarceration was "part of the continuum of management of offending behaviour" (2004b: 2). Intervention deployed a strategy of neo-liberal responsibilisation that emphasised the young person must "meet their responsibilities and lead a life free of further offending", ideally by internalising the norm of effective self-regulation. As part of this strategy, it was envisaged that interventions would be delivered in a state co-ordinated preventative network of community agencies focused on risk prevention.

These strategic mentalities articulate neo-liberal rationales of government that have progressively undermined penal welfarism since the 1960s (Muncie, 2005: 37). Muncie characterised this shift in the government of young offenders as "placing less emphasis on the social contexts of crime and measures of state protection and more on prescriptions of individual/family/community responsibility and accountability". In the context of youth offending, the young person is held fully accountable for their offences and obligated to act as a prudential subject to self-manage their conduct irrespective of their developmental status (O'Malley, 1992, 1996). This emphasis on individual responsibility and their positioning as a rational choice agent undermines s. 6(b) of the *CCPA, 1987* that recognises young people's "state of dependency and immaturity" and the need for "guidance and assistance", as well as their fundamental right that in all legal actions that the "best interests of the child shall be a primary consideration" that entitles them to social and developmental services (*UN Convention on the Rights of the Child*, 1990 Article 3.1). At the same time families are targeted and held accountable for their children's offending behaviour, often by encouraging them to participate

in family intervention programs to mobilise their investment in the management of their child's problematic conduct. In addition, a host of community agencies are enlisted into the management of young offenders, thus establishing "new forms of co-operative action" in alignment with the state's strategies and mechanisms for managing young offenders (Garland, 2002: 125).[7] This has generated an enhanced biopolitical network of crime control that "steers and regulates" the conduct of others rather than relying exclusively on that state to combat youth crime (Rose, 2001: 323-324).

In Garland's (1996) analysis, the responsibilisation strategy is one of several adaptations that have been made by the state since the 1970s in response to the "sense of failure of criminal justice agencies, and a more limited sense of the state's powers to regulate conduct and prohibit deviance" (1996: 447). He understands this as signalling a shift towards addressing the effects of crime – rising costs, victimisation, and fear of crime – rather than addressing its causes. Over the last three decades of the 20th century crime has increasingly been governed as a risk to be managed rather than a social problem that can be prevented. In alignment with this shift, rehabilitation has been redefined as being "a means of managing risk" rather than being driven by exclusively welfarist objectives (Garland, 2001: 176). Interventions have become offence-focused and delivered under the expectation that they can protect the public, reduce risk, and be cost-effective compared to "unadorned punishment". Rehabilitation is now understood as "a targeted intervention inculcating self-controls, reducing danger, enhancing the security of the public". It is within this political economy of "the efficient enhancement of social control" that we can appreciate the appeal of actuarial risk management instruments (like the Level of Service family of instruments) to penal administrators who are obliged to operate within this collective milieu.

The shift toward a "joined-up system of youth justice" has become subsumed within the broader process of public sector managerialisation since the 1990s and up until the present (Muncie, 2015: 290). Managerialism "stresses the need to develop a connected, coherent, efficient and above all cost-effective series of policies and practices" (Muncie and Hughes, 2002: 5). It systematises a series of relatively independent agencies and authorities to work in an integrated way by emphasising inter-agency co-operation to fulfil system goals, using agency mission statements that align with the overall goals of the system and the use of performance indicators to emphasise the efficiency of internal processes rather than effectiveness in reaching overarching goals (Robinson et al., 2013: 325). Youth policy is reconfigured as something that is actionable and auditable whereby governmental performance can be quantified and evaluated within a centralised and strategic administrative structure of corporate goals, governmental targets, inputs, and outputs across its domains of operation. Feeley and Simon (1992: 455-456)

have argued that by auditing outputs about the operations of the criminal justice system, crime is made "tolerable through systemic co-ordination" rather attempting to eliminate crime or realise social objectives such as employment or social integration. In their view these measures of performance provide the illusion of effectiveness, insulating penal institutions from external pressures. This lowers expectations about the criminal sanction itself or the capacity of corrections to rehabilitate offenders or achieve other social goals.

3.2.3 EVIDENCE-BASED NEO-REHABILITATION

As the authority responsible for managing young people sentenced to community-orders and detention, YJ is obliged to invest in rehabilitative programs for young people.[8] Under Rule 24 of the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (1985), competent youth justice professionals should support young people with accommodation, education or vocational training, employment, and other forms of assistance "to facilitate the rehabilitative process". The promotion of the well-being of young people should be "of paramount consideration" even though there remains a fundamental tension with a number of other "justice" considerations concerned with just desert, punishment, the protection of the community and incapacitation.[9] Given the delegitimization of penal welfarism, that has been sloganized as "nothing works", the growing emphasis on evidence-based programming since the 1990s provides a mechanism for de-politicising and legitimating the Department's selection of offender-focused programs. Evidence-based policy provides an avenue for justifying senior administrative decision-making, operating as a quality control mechanism (Naugton, 2005: 50). Evidence-based policy and practice has its origins in the practice of evidence-based medicine in the early 1990s that aimed at reducing the gap between research and practice by systematically searching for rigorous scientific evidence to enhance clinical practice. Within the penological field, evidence-based mechanisms have become a vital component in the manufacture of legitimate authority to implement reforms to reconfigure rehabilitative programs as being more exclusively concerned with the behavioural/risk management of the offender population to serve the interests of public safety.

These programs are marketed under the banner of "what works" in a strategic attempt to neutralise collective perceptions, sentiments, and beliefs that "nothing works" or that the youth justice system is "too soft" on crime. Naughton (2005: 51) describes evidence-based regimes as being a "post-ideological" or a depoliticised approach to public policymaking and the allocation of scarce resources that is "forward-looking, joined-up and strategic". Evidence-based offender programming is one domain of activity within the overall technocratic operations of managerialism and the aggregate risk management of offenders obsessively focused on reducing the rate of re-offending. Evidence-based programming operates in a metastable way

over time. Programs are selected on truth claims that they "work" or that they demonstrate "promising" results in reducing rates of recidivism (or are rejected if they cannot demonstrate reductions in the rate of crime). The ongoing evaluation of these programs contributes to an expanding and evolving evidence base to adjust and improve these programs, to support senior administrative decision-making, and to inform future program selection and policy directions.

Evidence-based programming now operates as a networked industry that trades in the development of offender programs and their evaluation to endorse their uptake in youth justice. Positivist criminologists, consultants and private industry, research centres in universities and state bodies use a variety of techniques of quality assurance to endorse or discredit packaged programs such as multi-systemic therapy, family training or cognitive behavioural programs. These techniques include localised evaluations of risk interventions and programs,[10] meta-analyses of these interventions over time,[11] and the use of data repositories that assemble and adjudicate which interventions are successful, promising or that do not work.[12] The publication and promotion of this data operates as a form of data brokerage that provides a globalised informational service as well as exploiting opportunities to promote and sell these treatment programs by providing a "tick of approval" for a model program and its proven track record.

3.2.4 YOUTH JUSTICE IN THE 21ST CENTURY: ONGOING TENSIONS

The introduction of actuarial risk management into NSW follows the trajectory outlined above that concentrates and intensifies the aggregate risk management of offenders to combat recidivism. It is in alignment with evidence-based offender programming and in conflict with youth diversion rationales and practices, including restorative justice, as well as many reform efforts to respond more effectively to the needs and vulnerabilities of young people. As we have seen in the previous chapter, the developers of the YLS/CMI were intent on eliminating any trace of welfarism from the rehabilitative efforts of youth justice professionals so that their assessments are aligned with targeting elevated risks across the dynamic risk domains in the instrument. This mode of operation in case management is in direct conflict with a human rights framework that emphasises the child as a rights bearer and that affords their best interests as a primary consideration. Actuarial risk case management eclipses the young person as a rights bearer or as a bearer of entitlements by casting them as a current and future risk to the community. Their needs are inverted becoming evidence of risk that, in turn informs intervention which is calibrated in proportion to the risk posed (McAra, 2012: 291). Their positioning as a threat to the community establishes an inherently conflictual relationship between the young person and their community where more and more community authorities are enlisted in the risk management and risk surveillance of the young people targeted for intervention. As demonstrated in the second part of this chapter, by making the intervention

proportional to the level and dimensions of risk, actuarial risk case management is in conflict with the just deserts principles of proportionality and parsimony.

The will to divert most young people from the criminogenic forces of the Children's Court and youth detention is in direct conflict with actuarial mentalities and the prediction of future risk. The technicist gearing of collective perception and action towards anticipating risk is a contaminating force that has spread into diversionary regimes in NSW because of the suspicion that a segment of those diverted away from the court may have elevated levels of risk that are not being targeted (see Chapter Six). While the current campaign in Australia to raise the age of criminal responsibility to 14 years is continuing to gain momentum,[13] actuarial mentalities understand anti-social behaviour as developing in childhood and seek to combat it as early as possible. This inverts social welfare or human rights conceptions of prevention, reconfiguring early intervention and prevention as a battle to target and neutralise criminogenic needs. The more benign idea that a child is "at risk" because of their complex needs and vulnerabilities that would justify a child-centred response is substituted by an actuarial conception that the child is a risk (Goldson et al., 2021: 39). Children are treated as criminals because of distorted actuarial views about the nature of anti-social behaviour and criminality. Advocates of actuarial justice actively disavow the criminogenic impact of the youth justice system, consequently demonstrating little interest in the virtues of diversionary measures premised on the principle of the least intrusive intervention.

Goldson et al. (2021: 39) argue that actuarial risk case management and its early intervention efforts "dovetail into, and bolster, impulses directed towards substantial net-widening effects […] and greater punitiveness and intolerance". Case and Bateman (2020: 8-10) agree, arguing that the globalisation of risk mentalities and practices have augmented the more punitive aspects of youth justice. In NSW in the late 1990s and first decade of the 2000s youth crime was highly politicised, feeding into disparate penal practices that contributed to an overall incoherence in the youth justice milieu. Over a seventeen-year period, the Labour government (1995-2012) led a strong law and order campaign that concentrated on police accountability and criminal justice along with the state economy, financial management and education (Hogg and Brown, 1998; Fishwick, 2015). There was a focus on the risk of recidivism, in particular prolific offenders understood as being responsible for a disproportionate number of crimes. NSW's first State Plan made reducing the rate of re-offending and reducing levels of anti-social behaviour key priorities (NSW Government, 2006: 29-35). This fed into the corporate priorities of youth justice supporting its investment in actuarial prediction and risk neutralisation.[14] Under the state plan, young people were the target of an elevated campaign that anticipated and intensified controls on young offenders convicted in the courts, and in pre-emptive intelligence-led measures established in local communities to combat "a minority of people who disrupt

(communal harmony and trust) through anti-social and criminal behaviour" (NSW Government, 2006: 23).

Over their time in government, Labour adopted a series of punitive measures to combat youth crime and anti-social behaviour. The *Crimes Amendment (Police and Safety) Act* was introduced in 1988 to provide the police with powers for targeting gangs and to disperse groups of young people from public areas. The *Justice Legislation Amendment (Non-association and Place Restriction) Act, 2001* empowered the court to impose orders restricting offender's movements and who they interacted with. In the period between 1999 and 2004, "security" within Kariong Juvenile Justice Centre repeatedly entered the public domain, resulting in the transfer of all young offenders at Karoing into the control of adult corrections under the *Juvenile Offenders Legislation Amendment Act, 2004*.[15] In 2006, the Anti-Social Pilot project was launched by NSW Government to identify and assess children and young people "at risk of causing harm to themselves or the community". This project exempted local state authorities from privacy laws to enable the exchange risk information about young people to establish a co-ordinated multi-agency risk management plan targeted at unruly young people in the police Local Area Commands participating in the program (Department of Premier and Cabinet, 2009: 2). In 2008 the *Children (Criminal Proceedings) Act, 1987* was amended to establish the use of Youth Conduct Orders. This new sanction targeted "lower end, anti-social type offences" that would otherwise have been dealt with by the *YOA, 1997* (Stokes, 2008: 10488; s. 48A (a) and (b)) using far more intrusive interventions. Finally, a series of amendments were made to the *Bail Act* in NSW that have imposed onerous and restrictive conditions on young people and that have contributed to NSW's rising remand population (see the section on remand in the second part of this chapter).

3.3 TRANSPORTING THE YLS/CMI FROM CANADA

In 1999 Anthony Thompson, an academic psychologist, was contracted by Youth Justice to adapt Hoge and Andrew's (1995) unpublished YLS/CMI instrument for use in NSW. This parent instrument was designed for use with young offenders aged 12-16 years. This instrument was a refinement of an earlier instrument, the Youth Level of Service Inventory (Andrews et al., 1984) which had been adapted from the Level of Supervision Inventory (Andrews, 1982) used with adult offenders (see Hoge and Andrews, 2011: 2-3).[16] Hoge and Andrews did not validate the instrument, initially relying on validation data from the LSI.[17] In 1996 a M.A. thesis was conducted by Jung that provided normative data based on a sample of 263 adjudicated young male offenders aged 12-17 years who were tracked for six months.[18] This data only reports on the distribution of raw scores across its eight risk domains and the total risk/need score. At that stage the norms used to classify the level of risk had been determined "on an ad hoc basis by

examining the distribution of scores" founded on this data (Hoge, Personal communication, 12 February 2020).

Thompson modified these age norms to suit offenders aged 10-17 years, revised its language to suit NSW's jurisdiction, included additional risk items and inserted a section concerned with the assessment of major strengths (Thompson and Pope, 2005; see Appendix One).[19] The modified instrument was piloted in 2001-02 using a sample of 305 young people on community supervised orders (DJJ, 2002a: 5). This sample was unrepresentative of the youth offender population which also includes all those diverted, those never detected and those in youth detention. Nonetheless, this small sample of offenders was used to establish the norms for the instrument's classification scheme. Thompson assumed that the emerging research reported by the Ottawans was sufficient to claim that the Australian adaptation was valid for use with males and females, and Indigenous young people (DJJ, 2002a: 7).[20] Thompson admitted that the risk scoring schema of the instrument was "preliminary", claiming that further research would "allow greater precision in (the) prediction of future offending, based on local norms" (2002a: 7). Around the same time, Hoge (2002: 391) also acknowledged that the "normative data and psychometric for the YLS/CMI are preliminary" and required further research.[21] At that moment in the evolution of the YLS/CMI, it could be argued that the instrument had the status of an abstract or primitive technical object (Simondon, 2017: 24, 46) as it had been introduced into the youth justice milieu as a relatively closed technical object without fully determining and attempting to resolve the problems of compatibility between its abstract schema of functioning and "the already given ensemble" in which it was introduced.

3.4 MODULATING YOUTH JUSTICE RISK ASSESSMENT AND RISK MANAGEMENT IN NSW

When the Department established its regime of actuarial risk assessment and case management, it developed several policy documents to support its operation. The YLS/CMI-AA was understood as an "aid in assessment and case planning activities with adolescent offenders" (DJJ, 2002a: 4). It was initially used with young offenders under youth justice supervision in the community, and for conducting risk assessments of young people in youth custody for the purposes of case management while being incarcerated.[22] In cases of violent and sexual offending, it was considered necessary to use specialist instruments to make predictions and deliver more specialist interventions.[23] Only trained community-based Juvenile Justice Officers and Juvenile Justice Counsellors were initially permitted to administer the instrument, extending their caseloads from the community into youth detention.

At the heart of these policies is the protocol about the case management of young people that aligns with the operations of the YLS/CMI-AA across its operating domains (DJJ, 2003a). This protocol has remained in operation with minor changes over time, although the penal settings in which it operates have been extended. The synchronisation of this protocol with the data-driven parameters of the YLS/CMI-AA is a co-individuating force where technical and human relations are mediated and stabilised according to the instrument's operational functioning, effectively synchronising and saturating differential relations within a convergent regime of functioning. This is technical individualisation in progress, a transductive operation "through which an activity propagates incrementally within a domain by basing this propagation on a structuration of the domain operated from one region to another: each structural region serves as the principle and model, as an initiator for constituting the following region, such that a modification thereby extends progressively throughout this structuring region" (Simondon, 2020: 13). Over time this ongoing transductive operation establishes a compatibility between the actuarial technical system and the disparate sites of operation within the collective Youth Justice system, actualising a socio-technical transduction as a regulatory system.

I want to be clear that the kind of co-individuation I am outlining in this chapter does not correspond to Simondon's conception of a transindividual collective relation. Youth Justice's actuarial policies oblige youth justice authorities to follow the YLS-CMI's "determinate operation, which fulfills a certain function according to a determinate schema" (Simondon, 2017: 252), thus significantly curtailing the discovery and incorporation of new potential values and norms of conduct within Youth Justice. The co-individuating relations established are of minor order where the YLS/CMI is viewed as being "an object of utility"(2017: 124), necessary to a successful "evidence-based" conception of youth justice, and where risk case managers are subjected to a kind of apprenticeship and ongoing performance audit using the techniques of training, supervision, and the monitoring of their risk management practices.[24] Case managers are required to adjust or restructure their mental operations and actions so that they coincide with the instrument's technical operations which have been imposed from above by the managerial structure of Youth Justice. They might internalise these norms and practices through a reciprocal co-individuation of the individual and the collective whereby their professional life and sense of self is restructured to acquire, if not invest in, the norms, values, beliefs, and concepts that are linked to the anticipatory risk management of young people.

The conjoining of policy and actuarial practice establishes a networked actuarial formation that operates at the intersection of voluntary and involuntary participation. It is driven by an informational logic that is produced by the YLS/CMI-AA's predetermined probability codes, thus setting the boundaries of what is knowable and actionable given the way in which the instrument has encoded "preexisting sequences of events as attributes…to measure the

likelihood of their recurrence" (Deseriis, 2018). The "individuality" of this network of operations is composed in a specific way, its defining property being its dissimilarity which is mobilised to demarcate its difference from other modes of being (see Raunig, 2016: 67-68). In the case of actuarial policy and practice there is an essential demarcation between welfare-focused and offender-focused modes of case management:

> Interventions need to go beyond simply attending to the welfare needs of young people…if casework is to be effective, interventions must be targeted and designed to meet the offending needs of young people. (DJJ, 2003a: 12)

The collective relations that cement group identities shared by individuals in the collective Youth Justice milieu are not yet transindividual as they require self-reflection on the limits and sources of conflict in the technical object's operations and its relational milieu that may be preventing the discovery of new thresholds of technical individualisation (Rantala, 2019: 253). The co-individuation of policy and the operations of the YLS/CMI-AA establishes a collective relation that possesses a "functional solidarity" whereby reciprocal relations occur between individuated beings who comply and identify with the "functional representation that others make of [the self]" (Simondon, 2005: 279-280, cited in Coombes, 2013: 37; Simondon, 2017: 253).

3.4.1 ENTRY INTO THE SYSTEM: ENROLMENT IN THE RISK POPULATION

On any given night in NSW, 63.29% of young people in detention are unsentenced, the majority being on remand (AIHW, 2021b: 17).[25] The refusal of bail is a mechanism of preventive detention that Feeley and Simon (1994: 175-177) describe as an administrative apparatus of actuarial justice that deploys a strategy of selective incapacitation prior to the trial, effectively overriding a rights-based strategy.[26] Over the first 15 years of the 21st century, a series of changes in bail legislation progressively eroded the presumption in favour of bail in NSW. This has generated harmful consequences for young people because of increasingly onerous and restrictive conditions in bail adjudications (Goldson et al., 2021: 40-41). Presumptions against bail were introduced in relation to repeat offenders, personal violence offences, public order disturbances and property offences and limits were placed on the number of bail applications a defendant could make. Youth custody data in NSW demonstrated a substantial increase in admissions to detention between 2003 and 2008 (Stubbs, 2010: 489-90). In that period admissions increased by 29.8% for control orders and by 56.0% for remand. By the end of 2007 most young people in custody were on remand, a trend that has continued to prevail across Australia (Goldson et al., 2020: 40-41). Stubbs (2010: 489) argues that the *Bail Act* prevails over other youth justice legislation such as the *Children (Criminal Proceedings) Act 1987.*

The introduction of the *Bail Act, 2013 (NSW)* removed offence-based presumptions to simplify the bail decision-making process (Brown and Quliter, 2014: 7475). The legislation stipulated that under s. 17, all bail authorities must apply an "unacceptable risk test" to assess whether there was a concern that an accused person if released from custody will fail to appear at any proceedings for the offence, commit a serious offence, endanger the safety of victims, individuals or the community or interfere with witnesses or evidence. The legislation was amended in 2015 after a law-and-order campaign to reinstate offence-based presumptions, setting bail refusal as the default for a set of "show cause" offences (2014: 76-82).[27] Under s. 28 bail authorities can impose an accommodation requirement on any child accused of an offence and for the purpose of admitting an accused person to a residential treatment facility for treatment. Recent research has shown that the police refuse bail at a higher rate for young people than for adults. They refuse bail in 13.8% of cases for adults and in 22.7% for young people. The courts overturn this decision and grant bail in 54.7% of cases involving adults and 60.4% of cases involving young people (Klauzner and Yeong, 2021: 7). This high rate of bail refusal for young people breaches article 37 of the *Convention on the Rights of the Child* that stipulates that the arrest, detention, or imprisonment of a child should only be used "as a measure of last resort and for the shortest appropriate period of time". It also breaches Article 40 2 (b)(i) that presumes their innocence until being proved guilty according to the law.

While Goldson et al. (2021: 40) have characterised the erosion of the right to bail and the increasingly restrictive conditions as being "a form of punishment in itself", this is only part of the problem. In this section I demonstrate how the actuarial policies instantiated by Youth Justice to manage young people on remand have seeded an actuarial administrative strategy that pre-empts and often maintains their placement in the deeper end of the youth justice system. While remand policy articulates that it intends not to draw the young person any further into the system than necessary by assisting them to meet the conditions for being granted bail, the incorporation of actuarial risk screening and a formal administration of the YLS/CMI-AA into these efforts has the opposite effect. It amplifies their risk status and maintains their involvement even when they are released on bail. Being placed on remand ensures their enrolment in the youth justice risk population prior to the trial and a determination of guilt by registering them into Youth Justice's database as a member of the risk population. By overriding a rights-based strategy the administrative direction adopted by Youth Justice paves the first "step along a path of actuarial justice" (Feeley and Simon, 1994: 176).

When a young person is bail refused by the police, on admission to a detention centre they are administered a Detainee Risk Questionnaire to determine their risk classification and placement within the detention centre (Juvenile Justice, n.d. c: 10). Since the introduction of the YLS/CMI-AA in 2002, policy requires that a community-based juvenile justice caseworker attend the

centre in which a young person is remanded to conduct an initial risk-needs assessment to assist in providing information to the Children's Court that may assist with granting or refusing bail.[28] In 2017, caseworker roles were added to the staffing structure of NSW's youth detention centres to enhance risk case management and facilitate a more co-ordinated way of exiting young people from custody into the community unless the anticipated risks of doing so were too high (n.d. c: 4-5). Under the current protocol the community caseworker takes the initial lead to assess the immediate needs and criminogenic needs to formulate an "intensive bail intervention" plan for consideration by the magistrate. This initial assessment is contaminated by an anticipation of possible risks to staff and community safety, where a prior history with Youth Justice is considered when conducting the assessment. There is a presumption of anticipated risk, although the level may be at a threshold of acceptability for being granted bail prior to trial.[29] If granted bail within the first two weeks of being in detention, the community caseworker may assume responsibility for case management prior to the trial and sentencing, acting as if they are already under the mandated control of Youth Justice (n.d. c: 10).

In cases where bail is initially refused, the community and youth detention caseworkers begin working together until the next bail court hearing to identify and respond to immediate needs while on remand. At this stage the YLS/CMI screening instrument is administered if there is no prior risk assessment available (n.d. c: 11).[30] The policy assumes that there is a likelihood that the young person may have been under Youth Justice's control previously and that data can be retrieved from Youth Justice's client database to recalibrate the needs and risks of the young person more speedily. Referrals are made for further assessment and support with a psychologist, Justice Health, and enrolment in the detention centre's school. In addition, the young person is enrolled in the detention centre's behavioural management's incentive scheme. At this point in time the young person is ensnared in an indeterminate zone, suspended between being someone waiting for a further bail hearing and being an inmate under state control. If the remand period exceeds two weeks, the centre's case manager assumes lead responsibility for case management. This pre-empts a longer-term interval of incapacitation where the full version of the YLS/CMI-AA is used to review criminogenic needs or is administered to formulate a formal risk case management for the remainder of their time in detention, even though there has still not been a trial or admission of guilt (n.d. c: 15).

If the young person pleads or is found guilty, the community-based case manager completes a Background Report[31] to assist the magistrate in determining their sentence under s. 33 of the *Children's (Criminal Proceedings) Act, 1987.* The preparation of the background report coincides with the re/administration of the YLS/CMI-AA, enabling a contagion affect where risk information from the risk assessment folds into the parameters of background report and its recommendations for sentencing (n.d. c: 16). Information from this risk assessment is

summarised and elaborated on in the report (Yassine, 2019: 42). Thus, while sentencing does not directly use an actuarial mechanism, the interpolation of this risk data into the background report reconfigures the mode of operation of the report and begins to influence the information that is considered in making a sentencing decision.

Maurutto and Hannah-Moffat (2007: 468, 471-474) have argued that this has significant repercussions on these dispositions as decision-making is permeated by the risk profile generated from the actuarial risk assessment. Sentencing decisions are influenced by the future possibility of re-offending in addition to sentencing rationales concerned with the attribution of responsibility, proportionality of punishment, consistency of punishment and the application of the least intrusive penalty given the circumstances of the offence and of the young person (Cunneen et al., 2015: 254-56). This alters the temporal frame from backwards-looking towards a forwards-looking mode of perception that may subject the young person with elevated risks to a more intrusive punishment either by sentencing the young person to detention or by intensifying the conditions placed on the young person sentenced to a community-based order.[32] Moreover, the instrument's risk information can result in quite inconsistent decisions that undermine just deserts principles.[33]

Many young people on remand remain there until they can meet the accommodation requirements of s. 28 of the *Bail Act, 2013*. Not living at home at the time of being charged with an offence assumes an elevated status as a risk driver that justifies a net of control relations that extend from being refused bail, being placed on remand, and then being placed under youth justice supervision to meet bail conditions prior to being found guilty of an offence. Many young people remain on remand even after being granted bail (Stubbs, 2010: 495). Wong et al. (2009) found that young women and young people under the age of 16 years are less able to meet their bail conditions. Research also indicates that the conditions imposed on young people are more onerous than those imposed on adults, including geographical exclusions, curfews, and bans on public transport and using drugs or alcohol and non-association provisions, which make it more likely that they will breach their bail conditions (Stubbs, 2010: 496).

Roughly 86% of the youth remand population receive a non-custodial penalty. The policy establishes an actuarial control net that begins with remand after being charged with an offence and that is then extended, initially using extra-legal community controls over the pre-trial period, and which continue after being sentenced. The remainder of the youth remand population are subject to pre-sentence preventive detention and post-sentence incapacitation. By incorporating the use of the YLS/CMI-AA into these procedures, a pre-emptive logic is introduced into bail and remand, augmented by elevated scores in relation to criminogenic needs. This legitimates interventions that exceed the law.

3.4.2 COMMUNITY RISK CONTROL

The bulk of the Department's youth justice risk case management is channelled into managing elevated levels of anticipated risk in the community. Recent data indicates that 76.45% of all young people under the control of Youth Justice were under community supervision in 2020-21, the remainder in youth detention (AIHW, 2021a: 7).[34] All young people on community-based orders are managed using the YLS/CMI-AA, even those on Community Service Orders. Young people are under community control for roughly a year and face a high probability of being sentenced to another community supervision order or a control order in detention in the future. McGrath and Thompson (2012: 254) reported recidivism data for 3,568 youth offenders under community supervision who were administered the YLS/CMI-AA between 2002 and 2005, finding that within 3 months of being assessed, 20.9% had reoffended; within 6 months 33.7% had reoffended; and within 12 months, 50.7% had reoffended. This and other data indicate that a significant number of young people re-offend while under community control as well as after completing a control order.[35]

In Youth Justice the fundamental governmental problem faced is managing a large segment of the youth offender population with elevated levels of anticipated risk who are circulating within the community, albeit in a highly regulated way where there remains a margin of uncertainty about what will happen. This segment extends beyond those young people on community orders, including young people released on parole, and young people exiting both detention and community orders who are enlisted into voluntary community offender programs. The transition from detention to community, the transition to a new location or new risk case manager and the exit from community supervision are all regarded as risk-laden events in the lives of young people necessitating further risk management (Youth Justice, 2016a: 5). All these transitions are proactively managed using a precautionary practice of "exit planning", extending actuarial control across the penal sites of community and detention. Near the time of exiting community control or detention a case review is conducted to establish a plan for exit and possible interventions in the community using risk information obtained from the YLS/CMI. As evidenced in policy, this is predicated on the expectation that the young person needs a regulated environment to curtail re-offending and the view that "[…] the child/young person's long-term needs remain the same" in both the community and detention (2016a: 5). In NSW these services are currently provided by a network of community agencies that deliver the Juvenile Justice Joint Support Program. This program works with young people exiting detention and community-based orders, establishing a more continuous actuarial risk management circuit between the legal controls of Youth Justice and voluntary community control. In this way, young people exiting detention are encouraged to participate in post-release programs along with young people exiting mandated community control. The priorities for case management remain

dictated by the risk profile established using the YLS/CMI where the agencies delivering these offender programs are regulated by performance targets established in funding agreements that are contracted with Youth Justice NSW (see Lohmeyer and McGregor, 2021).

The implementation of the YLS/CMI-AA described above has not required any adjustment in the legislative framework in NSW because risk case management retains the abstract structure of the penal welfare sanction as it would operate in probation or parole deploying a tactic of "coercive assistance" that retains the power to punish the offender for failing to comply with the conditions of supervision (Garland, 1981). Actuarial mechanisms modulate modalities of community supervision and decisions about intervention in synchrony with the anticipated level of risk of a distributed population of offenders. This makes it possible for rehabilitative and risk neutralisation and control objectives to resonate with one another – albeit it under highly regulated conditions – even though these objectives are of different orders of magnitude.

3.4.3 CUSTODIAL CONTROL AND POST-RELEASE CONTROL

Under s. 4 of the *Children's (Detention Centres) Act, 1987* the two main rehabilitative objectives of youth detention are to reintegrate the young person into the community as soon as possible and to sustain relations between the young person and their family and extended kin while they are incarcerated.[36] This competes with the logic of maintaining the good order and security of the centre through the centre's behavioural management and incentives schemes, punishment regime, and its use of separation for security and segregation for managing difficult behaviour, self-harm and risks to other inmates and staff. Since 2004, NSW has used an "objective classification system" to determine the security and safety requirements of detainees as the primary determinant of detainee placement within the youth detention system (Youth Justice, n.d. a: 1).[37] This security system denies high-risk and some medium-risk offenders access to many rehabilitation programs operating in detention.[38] The "needs" of young people in detention are assessed using the YLS/CMI-AA. The key focus of risk case management is directed to the young person's return to the community where anticipated risks on re-entry become the target of intervention in both settings.[39]

Policy insists that formal links must exist between Departmental community and detention centre staff to break down its operations as an entirely closed space where the detention regime may become over-focused on security management and the over-use of segregation to manage risky behaviour. This hinges on the role of the community case manager who attempts to "maintain a continuum of service delivery for each young person as they move into and out of custody" (DJJ, 2003a: 36). This role has been described earlier in relation to remand. When a young person is sentenced to detention without having been on remand, the YLS/CMI-AA is

administered by the community case manager if there is no prior risk assessment on record and they continue to participate in the formulation of the case plan and its review while the young person is in custody. Since 2017, a custodial case manager has assumed the lead role in this process in consultation with the community case manager, the centre's psychologist, and the unit manager (Youth Justice, n.d. a: 5-6). A case conference is conducted to facilitate case planning and case progress is reviewed every eight weeks or when significant changes occur that necessitate changes to the prescribed interventions.

While in detention a young person may be the target of an intense net of interventions in addition to being incapacitated in the centre. These include participation in the centre's school, placement on work experience/release, engagement in the behavioural management and incentives scheme, as well as a heightened and incapacitating mode of control that targets young people who cannot be managed through the incentives scheme and whose challenging behaviours are viewed as a significant risk to themselves or others (Youth Justice, 2016b: 1). In these cases, young people who have not complied with the centre's routines and procedures are targeted for more punitive and exceptional interventions stipulated in a detainee risk management plan (2016b).[40] These plans legitimate the routine use of force, segregation, and solitary confinement to extinguish challenging behaviours (see NSW Inspector of Custodial Services, 2018). Incredibly they may also be required to complete any outstanding work development orders linked to outstanding fines and complete any outstanding youth justice conference outcome plans (Justice, n.d..: 20). Subsequently young people in detention are exposed to multiple forms of punishment that are contrary to the s. 4 objectives of the *CDCA, 1987*.[41]

The policy assumes that leaving detention is the greatest threat of all and discharge planning is threaded throughout the detention centre's case management protocol from the time they enter custody and increases in intensity eight weeks prior to release where the community and custodial case managers work in tandem (Youth Justice, n.d. (c): 23). A series of deficit assumptions are made about the young person's capacity for self-regulation and the "unstable" environment they return to, presuming the necessity of ongoing external control (Juvenile Justice, n.d. (b): 1).[42] Two weeks prior to release the lead role is transferred back to the community case manager. A case conference is conducted that includes community agencies that may be considered necessary to work with the young person, and the young person and their family. Information from this conference and the ongoing risk assessment of the young person while in detention is used to formulate a case plan, including a release relapse plan prior to release. Young people serving sentences of more than three years may be discharged on parole, where they are managed as a medium-high risk irrespective of their most recent risk assessment to ensure high intensity supervision. In addition to being subject to formal control

by a community case manager, special provisions may be imposed because of recommendations made by the Serious Young Offenders Review Panel in cases where the young person was convicted of a serious indictable offence. Even if being discharged after serving the full term of an offence, the policy supposes the necessity of further risk management in the community by inciting them to develop a relapse prevention plan to brace themselves against the likelihood of reoffending and to accept enrolment in a post-release support program.

While policy articulates the importance of post-release interventions as being "re-integrative", the supposed support measures are heavily imbued with the anticipation of risk and its management. By integrating actuarial risk case management into re-entry programs these community support programs operate in the same way as parole. A reverberating risk control relation circulates between incarceration, post-release programming and community supervision by the state. Wacquant (2010: 616) has described re-entry programs as "an extension of punitive containment" in response to the disorders that the state has spawned or aggravated by retracting the social safety net and de-regulating the low-wage labour market. He argues that the reference to re-integration is more mythical than factual given the degree of marginalisation or educational and economic exclusion of those targeted for post-release programs. The provision of post-release support establishes an intense net of wraparound services that become part of a youth control complex that young people cannot escape from despite leaving the actual detention centre. Flores (2016: 7) has described this as being a form of "wraparound incarceration" that is incredibly difficult to escape from.

3.4.4 RISK MANAGEMENT IN YOUTH JUSTICE CONFERENCING

In 2010 case management policy was modified to incorporate risk assessment in the "diversion of young people from the juvenile justice system" (Juvenile Justice, 2010: 23). As warnings and cautions are managed by the police, this is a reference to YJCs that are administered by Youth Justice. Under s. 34 (1) (a) (iii) of the *Young Offenders Act, 1997*, one of the principles of YJCs is "to provide the child concerned with developmental services that will enable the child to overcome the offending behaviour and become a fully autonomous individual". As part of the preparation for conducting the conference, the conference convenor must meet with the key stakeholders involved in the offence and "take into account the specific needs of the child and any victim" (s. 45 (2) (c)). By this point in time the targeting of criminogenic needs had become taken-for-granted at the collective level and was saturating the internal operations of Youth Justice, now infecting conferencing whose relational practices were premised on the concept of restorative justice. By 2014 risk case management was understood as being "a streamlined process across conferencing, community and custody" (Juvenile Justice, 2014: 3). YJC's were recomposed to incorporate measures to reduce re-offending. Policy dictated that "for practice

to be effective in reducing re-offending it must be founded on a comprehensive assessment of a young person within the context of their environment and circumstances to understand their particular pattern of offending" (2014: 3).

The YLS/CMI Screening Version began to be used as part of the conference convenor's interview with the young offender (2014: 7). In cases where this device indicated elevated criminogenic needs, referrals were made for further risk assessment or interventions as well as being interpolated into the "negotiated" outcome plan that the young person agrees to and then is held accountable for. The outcome plan became more tailored to combating criminogenic needs insinuating the operations of conferencing into informal and formal community networks of risk surveillance and risk prevention.

3.4.5 THE RISK CASE MANAGEMENT PLAN

The Department's case management policy seeks to ensure that an ensemble of state and community authorities align their roles and responsibilities when working with young offenders in synchrony with the operations of the YLS/CMI-AA. This is articulated as being an "integrity principle" "that ensures that the case management process is delivered in the way it has been intended" (DJJ, 2003a: 13). The policy regulates case management practices in assessment, case planning, implementation and monitoring, and case plan review. It decomposes the autonomy of the YJO as a professional who works in relative isolation, reconfiguring them as a strategic risk knowledge worker who has a professional duty to minimise risks by working in partnership with others.[43] They are obliged to conduct a risk assessment, profile elevated domains of risk, plan an ensemble of preventive interventions that align with the profile to combat criminogenic needs, contract appropriate services, provide direct supervision with the young person, deliver some these interventions, monitor progress, and modify risk strategies and programming accordingly.

A case conference is a mechanism "by which information obtained from the assessment procedure is co-ordinated and integrated into a case plan" (Juvenile Justice, 2010: 26).[44] Multiple authorities and the young person and their parents or guardians gather to establish a case plan that is binding for all parties. (DJJ, 2003a: 25-8; Justice, 2016: 6).[45] The case plan is "dynamic" as it is modifiable in response to the young person's progress and changes in their "needs, interests and motivation" (Justice, 2016: 4). The young person is "encouraged" to be an active participant in this process, but they are obligated to comply with the interventions irrespective of their views. It is far more likely that their presence in a case conference is intended to nudge them, to press the necessity of taking preventive action into their subconscious mind, functioning as a budding line of contagion for change that may begin to shift the young person's gradient of

perception towards the future to motivate them to consciously control its uncertainty.[46] There is no deliberation in the policy about establishing a contract with the young person; however, the "sense of choice" implied here presupposes the logic of contacts and that participation in contractual deliberations is voluntary (Crawford, 2003: 489-90). The case management process is described as "a platform that ensures their (young people's) voice informs […] all aspects of the day-to-day management of their case" (Justice, 2016: 1). The goals of the case plan are described as something they have agreed to work on, written in their own words (2016: 4).

The agreed elements of the case plan effectively become the contract for all the parties involved. The contract is a technique of neo-liberal governing that redraws the state's regulatory relations with individuals, families and those agencies that become enlisted in the plan. The contract is one of several managerial techniques such as the use of performance indicators, audits and inspections that establish reverberating flows of responsibility and information between the state and other authorities, understood as "governing at a distance" (Crawford, 2003: 487).[47] Crawford (2003: 488-489) defines the contract as a mode of "regulated self-regulation", a kind of working agreement whereby the reciprocal parties make "promises" in relation to the distribution of responsibilities and obligations. Voluntary compliance with the actions, timelines and feedback mechanisms in the contract supposes that this is more likely to affect the behaviour of the parties than the blunt imposition of state coercion. In Crawford's account, choice does not need to be real, but parties need to act as if it is. In this way the contract "seeks to discipline and control the parties as part of the negotiated interaction" (2003: 489).

At some point a formal review of the case plan is conducted in collaboration with the young person to assess the young person's progress in the case plan and modify goals accordingly. This review also incorporates a re-assessment of risk using the YLS/CMI-AA and incorporates the Unit Manger's audit of case progress, compliance with the policy framework, and consideration of the manager's supervision of the YJO in relation to the case (Juvenile Justice 2016a: 9-10). In cases where the young person consistently fails to attend supervision, fails to comply with a specific condition, or is assessed as having a poor response to supervision, the possibility of taking breach action may be raised with the unit manager. If the young person is on a suspended sentence or parole, information about these concerns may be reported to the Children's Court. Efforts are made to avoid taking breach action unless it becomes necessary by intensifying the pressure to comply by varying the conditions of an order[48] or imposing stricter conditions in the case plan. Taking breach action can have serious repercussions for the young person. Under s. 41 of the *Children (Criminal Proceedings) Act, 1987* an authorized officer from Youth Justice, a police officer or the court can initiate action if that authority believes that the young person has failed to comply with the conditions of a good behaviour bond or probation or a youth justice conference outcome plan. Either a court attendance notice is issued, or a warrant for arrest is

initiated. If this non-compliance is proven in court the magistrate can deal with the matter using any of the sentencing penalties that applied at the time making the initial order. This may result in sentencing to detention, which may extend the period of punishment. In the case of the termination of a suspended sentence, where the good behaviour bond is terminated, the young person is incarcerated, and a period of non-parole may be established (s 41A (3)).

3.5 CONCLUSION

Youth Justice NSW has embraced actuarial risk case management. Over time its operational regime has propagated into all aspects of its core business operations, initially in the case management of young people on community orders and youth detention and later into youth justice conferencing. All operational sites managed by Youth Justice have become co-opted into the imperative to anticipate and combat "criminogenic needs". In the case of bail and remand, its deployment is more covert and indifferent to due process – by presuming the necessity of anticipating current and future risks, young people become a member of a risk population without having admitted guilt or being found guilty of an offence and many are subjected to actuarial control prior to sentencing. The assessment of risk has also permeated the background report that community case managers provide the magistrate, indirectly influencing sentencing decisions. It can be concluded that the uncritical acceptance of actuarial mechanisms undermines the rights of young people in direct and indirect ways, while imposing more intense controls on young people that are disproportionate to the offences they commit.

The actuarial protocols that have been developed in Youth Justice across these domains of operation are constitutive of a networked actuarial operational formation that establishes synchronous relations across these different domains. The relay of bodies between these penal sites is more limitless, speedier, more flexible, and more continuous in its mode of operation. At the same time young people are relayed into forms of actuarial community control by voluntary mechanisms ("post-community" or "post-release" support), maintaining their status as being an elevated risk to the community after their sentences have been completed. It becomes increasingly difficult to discern the boundary between coercion and active participation of a young person who has entered the system if they are ever going to be able to realise the promise of integration into the community free of "regulated self-regulation". The literature about "mass supervision" of adult offenders in the community understands that this extends the circuits of carceral control deeper into the community, while contributing to higher rates of incarceration because of revocation from community supervision (Robinson et al., 2012, Klingele, 2013, Phelps, 2017). The concept of a "carceral net" would appear to be less accurate within the context of youth justice given the driving logic of actuarial community control that saturates the policy protocols. The net is literally an actuarial network of control that operates using extra-

legal mechanisms that suspend the young person more indefinitely given its anticipatory logics and mechanisms of control. Actuarial control maintains the young person's membership in the risk population, making it very difficult to escape the deep end of the Youth Justice system.

I have used Simondon's concept of the operative process of transduction to consider the co-individuation of Youth Justice case management policy in alignment with the operations of the YLS/CMI-AA. This can be understood as a progressive and ongoing structuring process of actuarial technical individualisation that has propagated across the key operational sites of Youth Justice, saturating these differential relations to achieve a convergence of functions into a structural unit (Simondon, 2017: 28). By contrasting Simondon's (2017: 250-255) account of the transindividual relations that mediate human-technical co-relations with the utilitarian mode of operation that is concretised in these policies, it can be argued that the co-individuating network of human-actuarial relations deploy an over-determinate informational logic that limits the potential for changes in these regulatory relations. If the concretisation of the YLS/CMI-AA was to advance, or if the overall socio-technical relations were to realise new potentials in the operations of Youth Justice, a transductive logic would need to be employed. This would help to generate information to discover a transductive operation that establishes a compatibility between disparate levels of reality that emanate from the collective milieu to initiate a restructuring of these relations and continue the process of technical individualisation at a new stage of individualisation.

CHAPTER FOUR: THE TECHNICAL INDIVIDUALISATION OF RISK CASE MANAGEMENT IN YOUTH JUSTICE

4.1 INTRODUCTION

This chapter provides a close analysis of how the Youth Level of Service/Case Management Inventory Australian Adaptation (YLS/CMI-AA) mediates human-machine relations in Youth Justice NSW using Simondon's concept of the transductive operation. I concentrate on the force relations brought to bear inside the instrument and the energetic relations this establishes with its associated milieu. The instrument's anticipatory data structure has been designed to modulate two core domains of activity – the risk assessment of young offenders, and a mode of case management aimed at reducing the rate of recidivism by targeting criminogenic needs – so that these two domains achieve a degree of communicative rapport and convergence of relations with one another. I characterise this as a mode of technical individualisation that informs a network of diverse authorities that become enlisted into the ongoing and metastable risk case management of young offenders. This process of technical individualisation applies equally to the evolving subjectivity of the young person, who is constituted by dynamic informational processes through which agency is distributed. This chapter works in conjunction with the previous two chapters to provide a more comprehensive sense of how the values and norms that have been concretised in the YLS/CMI-AA mediate the collective action of youth authorities across Youth Justice's key operational sites.

The chapter begins by introducing Simondon's conception of transduction as an informational process. Here, different informational properties interact with one another to generate a new structuring signifying system (that expresses new informational properties) at the meeting point between two disparate fields and their potentials (i.e., in this case at the meeting point between the differential milieus of case classification and risk case management) (Iliadis, 2013: 12-13). I use Simondon's (2020: 13) conceptualisation of the transductive operation as a technical individualisation in progress to describe how the calculative operations structured into the YLS/CMI propagate incrementally across the regions of risk scoring, risk profiling, risk management, and case review. By modulating human activity across these sub-domains, risk information is put into relation at each of the instrument's four thresholds of calculation to progressively structure the parameters of risk case management in alignment with its case classification principles.

The remainder of the chapter situates my analysis of the YLS/CMI-AA's regime of functioning within a wider literature about security regimes and the anticipation of risk. The analysis

demonstrates how the operations of the YLS/CMI-AA employ a security logic that is consistent with networked anticipatory regimes concerned with extrapolating the future location of a moving target to enable a more pre-emptive and precise targeting to neutralise risk. Most young offenders are "put into circulation" in the community and exposed to neo-liberal relations of capacitation and a disabling mode of behavioural control where there is no normative guarantee of rehabilitation or re-integration. They become exposed to a highly pressurised and continuous control net that is dense, mobile, and metastable as it adjusts to the body and its movements. Biopolitical regulation establishes a mobile confinement that is debilitating by demanding that young people comply with, or more ideally, internalise the norm of effective self-regulation.

4.2 USING SIMONDON TO DESCRIBE THE YLS/CMI-AA'S REGIME OF FUNCTIONING AND ITS REGULATORY EFFECTS

Before describing the YLS/CMI-AA's individualising regime of functioning in detail, I outline the analytical framework that I use to grasp how the instrument's anticipatory data structure modulates its two otherwise disparate domains of activity – the risk assessment and the case management of young people – so that they realise a functional convergence over the course of a young person's time under state control. Simondon defines transduction as "an operation whereby a domain undergoes information" to designate the very operation of taking on an individual form or structure that resolves a tension between two disparate reals (Coombes, 2013: 6). In this conception information is the "signification that will emerge when an operation of individuation will discover the dimension according to which two disparate reals [such as the risk classification and the level of supervision] can become a system" (Simondon, 2020: 11). This necessitates an account of the technical object's transductive operations as "an individuation in progress" (2020: 13) that I characterise as being the technical individualisation of risk case management. Given the YLS/CMI-AA's infrastructure, how do each of its operational sub-domains transductively propagate as an activity incrementally "by basing this propagation on a structuration of the domain operated from one region to another […] such that a modification thereby extends progressively throughout this structuring operation" (2020: 13).

The risk codes in the YLS/CMI-AA are an abstract anticipatory data structure that is executed and actualised through a successive series of transductive operations that move across the operational domains of the instrument: risk scoring, risk profiling, case management, and case review, all of which are executed through the intermediary of the risk case manager. The risk case manager is not only regulated by the risk codes but also by the instrument's case classification rules. A co-individuation between the technical object and the risk case manager begins to come into being, which in turn, modulates the calculation of risk and decisions about how to intervene across these four operational domains. To illustrate this transductive

operation, in the calculation of the young person's anticipated level of risk there is a passage as information that is executed across each disparate element of the risk scoring system is transformed through the individuating process of calculating a total risk score. Disparate information captured about a young person's activities and thoughts is received, tabulated, and transformed through the YLS/CMI's risk scoring schema across an informational threshold that calculates a total risk score. The transductive operation concretises the instrument's abstract calculative schema, enacting a differentiating process that localises in a more determinate way the anticipated level of risk. The risk score "does something […] by operating a technical individualisation" (Viana, 2015: 31).

Simondon (2020: 666) defines modulation as an individuating process that "puts an operation and a structure into relation". The instrument's structure is put into relation with its trans-operative sub-domains that progressively restructure informational relations so that there is a recurrent causality between the risk assessment and risk management that functions in alignment with the case classification rules. Modulation establishes a mode of informational exchange between each of the operational domains of the instrument and information that comes from the associated milieu that registers information about young people's lives. In this dynamic exchange of information risk information is put into relation at each of the four at each of its thresholds of calculation or signification across the instrument's operating domains. Each domain establishes a "milieu or middle-ground" of signification that modulates by relaying information between these domains to establish an active modulation across the internal relations of the YLS/CMI and its associated milieu (2020: 666).

While the instrument has a functional structure, it is the reciprocity between these operations that modulates and materialises an individualised and metastable mode of risk case management. This mode of technical individualisation unfolds on a convergent plane of immanence that becomes actionable in the penal milieu in which the instrument is being used. To put this another way, the direction of risk case management unfolds as "an event in which certain immanent properties of matter [e.g., variations or fluctuations in risk information] are expressed" according to certain measures and constraints that are structured into the YLS/CMI (Hui, 2015: 78). Each domain of the instrument promotes the functioning of other domains, establishing informational relays that reduce the margin of indeterminacy or chance variation in the associated milieu in which the instrument is being used (Simondon, 2017: 65-66). The instrument's capacity to actualise "a recurrent causality" across these domains as they are operationalised in the associated milieu, establishes more stable and homeostatic relations that places a limitation on variation in the associated milieu.

4.3 MEDIATING THE RISK ASSESSMENT TO PROFILE RISK AND ESTABLISH RISK CASE MANAGEMENT PRIORITIES

4.3.1 THE ANTICIPATORY CODES OF THE INSTRUMENT

Since its introduction in 2002, the YLS/CMI-AA continues to use the eight risk domains established in the parent instrument and has never varied any of the sub-scales in those domains (see Figure 4.1 and Appendix One, Part 1 for the full version of the instrument).

Figure 4.1 The eight criminogenic domains in YLS/CMI-AA

Risk Domain		Assumed predictive power	Number of sub-scales
1	Prior and current offences	Big 4	8
2	Family and living circumstances	Moderate	5
3	Education/employment	Moderate	7
4	Peer relations	Big 4	4
5	Substance abuse	Moderate	6
6	Leisure/recreation	Moderate	3
7	Personality/Behavior	Big 4	4
8	Attitudes/beliefs	Big 4	5

This data infrastructure is the basis that informs all the other operational domains of the instrument through the intermediary of the instrument's case classification rules. Its probabilistic structure deploys a linear model of statistical reasoning where a vector of inputs, $X_T = X_1, X_2, X_3 \ldots$ are used to predict the output *Y*. The left-hand side of this mathematical expression is the "value that is predicted or calculated (the response variable)", the anticipated risk of re-offending, and on the right-hand side are the variables that "contribute data" to the probability model (Mackenzie, 2017: 42). Each of these variables represent quantities without fixed values, where the probability model supposes the relationship between these variables can more effectively determine the anticipated outcome. It is through the inferred relations between these variables that the model can be understood as being a sign system that "stands for its object" representing the risk of recidivism in a quantitative form (Houser, 1992: xxxvii). The modelling and its reasoning are iconic in that the model's algebraic sign system resembles the object it stands for (Mackenzie, 2017: 42). Pierce (1992: 226) contends "Icons are so completely substituted for their objects as hardly to be distinguished from them". Despite the multifactorial character of the predictive codes in the instrument, the quantification of the risk

of re-offending remains an opaque or partial observation that cannot accurately predict this risk as well as being inherently biased as a function of the selected risk codes. The disparity between predicted and actual values – the degree of indeterminacy or predictive error – is a source of tension inherent in the elementary structure of the YLS/CMI-AA.

4.3.2 CALCULATING THE LEVEL OF RISK

The instrument's risk codes establish a limitative way of making sense of the world because of the singular gradient of perception that links re-offending to criminogenic needs. By establishing communicative relations between the instrument's internal operational domains, the human operator who performs these functions, and the milieus in which young people live, a complex and dynamic transductive relation begins to unfold. A correlation is established that traverses these different spatial and temporal milieus and their contents. The person conducting the risk assessment is an intermediary between the technical object and these associated milieus where information is exchanged across relational milieus. Those conducting the risk assessment sense the world through the YLS/CMI-AA's anticipatory technical schema. The instrument's eight risk domains modulate the cognitive labour of the risk case manager by capturing attention and channelling their perceptual and cognitive faculties as they work logistically through each of these risk domains to anticipate the future. Adams et al. (2010: 255-256) understand this as an abductive way of reasoning that compels the subject to determine a course of action in the face of ongoing contingency and an uncertain future.[1] The instrument cues the risk case manager to use risk data from the young person's past to anticipate the future and begin preparing for this as if this future is already here. The eight domains establish entry-points for the datafication of young people's lives that disaggregates embodied experience and subjectivity by abstracting life into discrete and standardised risk categories.[2] Datafication occludes the structural and contextual relations that shaped the young person's experience, distancing the assessor from their clients as they become objectified and increasingly acted upon from a distance (Aas, 2004: 382).

Each of the 50 risk items are scored and recorded on a print version of the instrument and this data is entered into a client database (Department of Juvenile Justice, 2003a: 11).[3] The assessment may directly obtain information from the young person using a structured interview while other data is assembled from information on files and that has already been recorded in the client database. Information is also gathered from key informants. Each item is externally validated using a binary scoring system that records its presence or absence, quantified as a 1 if it is "true for the young person" and can be justified by the assessor. The software program in the client database re-aggregates the data, calculating the sub-score totals for each risk domain and tabulating the total risk score.

Figure 4.2 Scoring the instrument

Mark only items that are true for the client, by ticking the relevant box. Always refer to CIDS to check or verify any details known about the client.

1. Prior and Current Offences *Do not include cautions, conferences or fines*	
1.1 Age at first court order[4] 14 years or less (2) 15 to 16 years (1) 17 years or older (0)	✓
1.2 Outcome of first court order Control or supervised order	✓
1.3 Type of offence involved in the first court order Common assault, break and enter or motor vehicle theft	
1.4 More than one court order in last 12 months	
1.5 Three or more prior offences	
1.6 Two or more failures to comply	
1.7 Prior committal	
1.8 Three or more current offences	
Area 1 subtotal	2
Comments:	

Staff have been trained to use a series of prompts when interviewing their clients to explore each risk domain at a granular level and begin considering the relations across the instrument's risk domains to help in verifying the risk factors (Yassine, 2019: 90, 107). For example, the following prompts are used to explore the relations between offending behaviour, anti-social thoughts and behaviours, and possible risk milieus such as the family, schooling, and peer relations.

What are your current charge(s)/offence(s)?

Was it planned?

Consider impulsivity

Consider motives

And whether or not things went to plan… e.g. planning

What was happening for you around the time of the offence? e.g. at school/work, with family, partners, finances.

Explore the build-up to the offence and possible triggers.

Who was harmed as a result of your offence(s)? (Note whether the young person feels that they are the only person affected)

(Yassine, 2019: 91, 94)

From the outset the instrument modulates the cognitive labour of the assessor to profile for evidence of elevated risk, founded upon the supposed traits of an individual who has an anti-social personality (see Chapter Two). This profile of a high-risk individual is the background iconic image that has been coded into the instrument's risk domains and that have become correlated, considered as necessary to discerning the pattern between the eight logistical input domains of the instrument and the predicted outcome criteria concerned with the risk of re-offending. The inclusion of anti-social traits across the instrument's risk domains inevitably elevates the total risk score and overestimates the anticipated risk.[5] In addition, a young person's structural location may also influence risk scores across the risk domains of the instrument, operating as discriminatory and unacknowledged bias in the instrument's anticipatory codes.[6] Taken together, elevated scores across multiple domains suggest "a continuity, a propensity, a taste of what is yet to come" (Crandall, 2010: 74).

In technical terms this is the primary "function-finding operation" of the instrument (Mackenzie, 2017: 80) that estimates the relation between a valued outcome domain and its co-domain of risk variables. The risk scoring schema generates a risk profile that identifies the overall level of anticipated risk (the total risk score) and a map of how this is distributed across the eight risk domains of the instrument (see Appendix One, Part 2 and Appendix Two). This profile is a contingent truth apparatus of distributed probabilities where its component propositions constitute a series of statements that link risk scores with the instrument's rules of risk, need and responsivity case classification. Together the risk profile and these rules are constitutive of the fundamental enunciative function of the YLS/CMI-AA that regulates what can be said and done in relation to risk case management. They enunciate the authority to differentiate between individuals according to their membership in an aggregated risk category that establishes the de-individuating relations that are brought into play by the statement itself.

4.3.3 MODULATING RISK CASE MANAGEMENT

> While the overall risk level exhibited by a youth is relevant to decisions about security and the level of service to be provided, it is the pattern of needs that is most relevant in case planning. (Hoge and Andrews, 2003: 6)

The risk profile and the principles for case classification establish the template that governs risk case management in Youth Justice NSW. The total risk score and the aggregated sub-scores across the risk domains are interpolated into the instrument's information summary form, along with a narrative summary of the individual, familial and community strengths identified during the assessment (DJJ, 2002c: 11; see Appendix Two).[7] Since 2014, any responsivity issues that may pose a barrier to "effective rehabilitation" or that may assist to enhance rehabilitative efforts are identified using a responsivity checklist of 54 items derived from the YLS/CMI 2.0 (see Appendix One, Part 3).[8]

4.3.3.1 MODULATING THE INTENSITY OF INTERVENTION

Under the risk principle, "intensive service" is targeted at young people with elevated total risk scores (Hoge and Andrews, 2011: 1). In the period between 2002 and 2014 in NSW three levels of risk were identified using the total risk score: high (a score of 24 or more), medium (a score between 13 and 23) and low (a score of 12 or below). Since 2014, four categories of risk have been used that are like the norms used in Hoge and Andrew's YLS/CMI 2.0 for offenders under community control.[9] The new classification schema classified the total risk as being high (scores 31 and over), medium high (scores between 18-30), medium (scores between eight and 17) and low (a score of seven or below). Youth Justice applied the risk principle using an administrative schedule of standards for supervision levels that delineates the number of direct contacts necessary according to the total risk classification and system of referral to external services to "maximise community integration and to provide additional case plan support" (Juvenile Justice, 2016a: 11). For example, a high-risk classification requires a minimum of six direct contacts, and preferably up to 10 contacts per month, while a low classification may result in a referral to an external service provider, the case might be filed down without supervision, or a minimal amount of monitoring will be maintained for the duration of the community order. If a young person did not have a background report completed prior to being sentenced to a community order, they are treated under the categorical suspicion of being at a medium-high or high-level of risk until the risk assessment has been completed, thus subjected to intensive supervision.[10]

4.3.3.2 MODULATING THE RISK CASE MANAGEMENT PLAN

Using the need principle, the kinds of intervention that are considered match elevated levels of risk across the seven dynamic criminogenic domains identified in the risk profile. The case

management plan primarily consists of goals that target the medium to high risks across these domains (Hoge and Andrews, 2011: 7). However, the incorporation of the responsivity principle places additional demands on the young person as "barriers" to intervention are incorporated into the case plan. The objectives, targets and timeframes established are an assemblage of dynamic and potentially conflictual relations concerned with combating criminogenic needs, managing the responsivity characteristics of young people, and capitalising on protective factors evident in the lives of young people. As demonstrated in Chapter Two, the incorporation of a comprehensive assessment of responsivity factors was designed to "strengthen [practitioner] adherence with the principles of effective treatment" to combat recidivism (Andrews et al., 2006: 8). Without targeting highly salient non-criminogenic needs it was strategized that efforts to combat criminogenic needs associated with reoffending would be undermined. Resistance itself, both in the practitioner and the young person, and other limits to combating recidivism are neutralised by combining the risk, needs and responsivity principles, amplifying the combative and relations and effects of the instrument's regime of operation. Targeting elevated criminogenic needs multiplies the net of preventive interventions. This intensifying the pressure for young people to manage multiple domains of life that they have been struggling with to produce efficient movements along prioritized channels of regulated mobility. By tightening the level of control on the young person the principle of applying the least intrusive intervention is substantially compromised (see Maurutto and Hannah-Moffat, 2007: 471-480).[11]

4.3.3.3 METASTABILITY IN RISK CLASSIFICATION AND CASE MANAGEMENT

The archiving of the risk profile in the client database enrols and the young person in a more circuitous risk surveillance enabling a more granular and indefinite risk identification within this wider context of a "population of risk records" (Adey, 2010: 93). The profile provisionally locates each risk member along a topological map of distributed risk to target a series of interventions concerned with interrupting the flow of high-risk mobilities. At the same time an inter-agency surveillant assemblage is put in place (Haggerty and Ericson, 2000) – or more precisely both the watcher(s) and the watched are mobilised, put into circulation in an open-ended and underdetermined space to make more precise identifications of risk and adjust the intensity and type of interventions accordingly (Moore, 2013: 58-59).

The parent instrument incorporated a mechanism of case management review into its architecture (Hoge and Andrews, 2003: 7; Part 7 of the instrument). This was designed for reviewing case progress to consider whether the risk classification score should be changed and to record incidences of noncompliance with judicial orders and other changes in the "client's" circumstances. The developers' rationale behind reclassification was based on the claim that by following the case classification principles, evidence would accumulate demonstrating that offenders' risk scores would fall (Bonta, 1996). In NSW the operational guidelines required the

risk case manager to re-assess the level of risk across the risk domains, recalculate the total risk score using the instrument again and enter this into the client database (DJJ, 2002a: 14). Policy required that they establish a date for review of each case at the time of initially entering the results of the risk assessment into the database (DJJ, 2002a: 16). It is noteworthy that it was initially stipulated that "it is not advisable to lower the risk of re-offending […] however, there may be grounds for increasing the risk category based on your knowledge of additional factors" (2002a: 14). The recalibration of the risk classification score becomes a channel of communication between the case manager and their line supervisor linked to the enunciative parameters of the YLS/CMI-AA. The line manager monitors compliance with data capture requirements and adopts a disciplinary/pedagogical role to foster the development of the operations and mentalities of risk management. The supervisory relation adjusts its discursive frame of reference to consider the technical task of whether any of the targeted sub-domains and the total risk score should be changed.

Aas (2004: 379) has demonstrated how information technologies establish a "cultural environment that requires its users to communicate within certain parameters". In the dyadic supervisory relation, there is an emerging technical co-individuation that occurs between the risk case manager and the line supervisor mediated by the imperative to audit and review the risk score(s). This reiterative process is amplified as supervision occurs for all risk case managers in each of NSW's 35 Community Centres who are involved in the risk management of young people. A communicative maze of mediating actuarial relations propagates across a series of interconnected domains: the training of Youth Justice Officers (YJOs) in the administration of the instrument, the risk management of each young offender, the enunciative parameters of supervision, and so on. The supervisory relation is another operational region of transductive technical "individualisation in progress" (Simondon, 2020: 3, 11). I have described this co-individuation in broader terms in section 3.4 of the previous chapter as being a functionalist co-individuation driven by the determinate informational logic of the YLS/CMI-AA. The individual subject and the group co-emerge or co-individuate in a reciprocal relation, becoming a collective ensemble that participates in and may come to embrace an actuarial cultural formation, albeit a collective relation of "functional solidarity".

The supervisory relation is annexed by a technical problem focused on re-assessing each young person's risk score(s) to reduce the margin of determinacy in the initial calculation of risk to determine their location more precisely in the distributed risk population and take more effective preventive action. As a result of feedback, or relations of circular causality, between the coupling of the calculative operations of the instrument and contingencies that have become more evident in the milieu of intervention, the elements and tactics deployed in individual case management plans can be modified at determinate critical thresholds. Over time this ongoing

calculative process exercises a series of conditioning and controlling transformations on the relations in the supervisory milieu. This developing line of individualisation reconfigures the milieu's mode of operation as some elements are assimilated and others excluded in the meeting of differential relations and elements in that pre-existing milieu (Simondon, 2020: 251). In the supervisory relation prior forms of communication that may have amplified social welfare functions begin to decompose as they enter relations concerned with acquiring a more granular accumulation of risk knowledge about the young person's level of risk across a series of zones of risk, whether there is evidence of change that can be recalibrated in the risk classification system, or whether there have been abrupt and detrimental developments that require a more immediate response.

Deleuze (1992) provided a quite gloomy account of control whereby individuals find themselves targeted for a more continuous mode of modulated control that extends beyond any single operational or normative setting (e.g., as evident in the logic and mobilisation of lifelong learning). Individuals appear as dividuals "due to their reduction to statistical values" and are mobilised under a post-analogue regime of visibility and control that subjects them to a more permanent state of metastable modulation of their activities and performance (Ott, 2017: 2-3; Delueze, 1992: 4-5). This logic of continuous modulated control is evident in the YLS/CMI-AA's regime of operation. Young people lives are the subject of a continuous anticipatory operational process whereby particular aspects of their lives are brought into a sharper focus by the risk codes of the instrument, becoming technical variables. In turn, young people become the object of an ongoing calculative process that evaluates their behaviour, thoughts, and capacity for change. A concept of the subject emerges that views the individual as the product of "processes that are always-already technological and biological, and through which agency is distributed" (Tucker, 2013: 33). Disparate pieces of information are recalculated into a technical system of relationality in the updated risk score. The subject is located within these disparate relations as an "active middle ground" (2013: 35) of dynamic informational processes that are modulated by synchronising human-machine relations that traverse the instrument's data infrastructure, risk surveillance, and risk prevention.

Informational flows establish the "condition for present and future forms of individual subjectivity" (2013: 33). I characterise this as an ongoing process of "technical individualisation" that is enacted over a series of calculative and metastable moments in the ongoing risk case management of young people. The recalculation of risk helps to resolve any potential disparities in relation to the risk status of an individual given a prior calculation of risk, as well as in the existing parameters of risk case management, in the light of new information. The recalculation of risk not only helps to improve the indeterminacy of prediction, but it also helps to achieve a more effective synchrony between the anticipation of risk and tactical management of risk.

Following Simondon's conception about individuation as being the operation of a system as it moves between states (O'Hara, 2019: 224), the recalculation of an individual's risk classification and risk profile can be understood as having the informational capacity to alter current patterns of being because of the establishment of a new calculative threshold that expresses a qualitatively new level of existence (Tucker, 2013: 33).

The principle of reclassification of risk can also be understood using Foucault's (2007: 20) account of the security milieu as a "series that will have to be regulated within a multivalent and transformable network". He describes security as attempting to govern a milieu by organising a series of regulations that maximise "the positive elements, for which one provides the best possible circulation, and of minimising what is risky […] while knowing they will never be completely suppressed" (2007: 19).[12] There remains a temporal uncertainty as the combined, overall effects of the intervening forces established in the case plan can never be fully known in advance: How will any young person respond to these intervening forces? What other aleatory events might unfold? Will they re-offend despite the intrusive interventions that they are subjected to? Reclassification is a security mechanism for managing uncertainty or the indeterminate that prolongs a state of anticipation and its affective relations. Foucault states, "The milieu […] will be that in which circulation is carried out" (2007: 21). It is in this way that we can appreciate Moore's (2013: 59) description of control as operating by "putting bodies into movement […] making the watcher and the watched circulate". For what purpose? Foucault (2007: 45, 46) replies, "the apparatus of security […] lets things happen" by "standing back sufficiently so that one can grasp the point at which things are taking place, whether or not they are desirable". The young person is afforded a certain "freedom of movement […] in the sense of 'letting things take their course'" (2007: 41). The strategy is grounded in a neo-liberal rationality founded on the economic model of *homo economicus* who is free to choose within a regulated governmental field.

4.4 THE STATE OF ANTICIPATION

The instrument's capacity to abduct the mental operations of youth justice authorities to anticipate a young person's risky future is understood by Adams et al. (2009: 247) as a dimension of being in a state of anticipation. They understand this as an epistemic orientation to the future and "an affective state, an excited forward looking subjective condition characterised as much by nervous energy as a continual refreshing of yearning, of 'needing to know'". The risk profile establishes this state of anticipation by orienting the case manager temporally as they become aligned with the profile's risk control parameters to determine a course of action in the face of an anticipated and yet undetermined or uncertain future. At the same time this authorises an ethos of preparedness, of mobilising preventive action now for an anticipated crime yet to

happen. This preparedness may have an ethical dimension, an imperative or "a will to anticipate" in the face of a possible adverse future, "engendering alertness and vigilance as normative affective states" (2009: 254).[13]

Anticipatory regimes work through a logistic of expansion, extending their reach in time and space to enable tactical interventions that both prevent and enable possible futures (Adams et al., 2009: 250-253).[14] The modulating relations of the YLS/CMI-AA structure the case plan in ways that are both capacitating and disabling for the young person: components of risk intervention plans can strategize to develop capacities/promote social inclusion as well as curtail and contain movement by prohibiting contact with others or stipulating where they must live or how their time must be scheduled. The attempt to enlist the young person as an active participant in the case plan may foster a sense of anticipation in the young person about their future well-being, demanding action in the present. The elevated domains of risk are used as tactical leverage points that invite the young person to "choose positive alternatives to offending behaviour" (DJJ, 2003b: 10). I have described this in the previous chapter as a mode of "regulated self-regulation" that may begin to take shape at the case conference.

Logistically, regulated self-regulation promotes conditional programs of self-improvement, self-sufficiency, and health management – the idea that the subject can capacitate itself or become capable of a particular mode of conduct – while being modulated and assessed in relation to conceptions of compulsory ablebodiedness and an assimilationist normativity (Puar, 2009: 163) that is regulated using the risk parameters of the YLS/CMI-AA. This capacitating relation needs to be understood as existing within a relation of other debilitating forces linked to poverty, disability, ongoing trauma, the continuing inter-generational effects of settler colonialism and governmental failures in delivering effective services to children and young people.[15] Debility, "the impairment, lack, or loss of certain bodily abilities" (Livingston, 2005: 2) both pre-figures in and is an effect of historical forces, capitalism and colonial, socio-political, biological, geographical, technical and governmental regimes of (in)action.[16] On the side of debilitation, debility is an endemic way of life where ordinary lives persist with injury, disability, poverty and loss "without qualitative improvement" (Wearing et al., 2015: 112).

Capacitation implies a promise that "it could get better", "you can get back on track", suspending the young person in the actuarial regime. This positions already debilitated bodies within a neo-liberal conceptualisation of human capital as being a "capital-ability": the individual possesses and can develop life-long skills and abilities as an investment in their own future income, well-being, and security (Foucault, 2008: 223-224). This capital-ability, where "the worker appears as a sort of enterprise (for the self)", constitutes children and young people as a "machine that produces" (2008: 224).[17] At the same time, adverse situational and structural factors may

overwhelm young people's capacities to attain the objectives in their case plans. They may be "heavily depleted of energy and resources needed for making a real difference in circumstances" (Halsey and Deegan, 2015: 175). Debilitation is a way of interrogating the YLC/CMI-AA's culpability in failing to adequately recognise these chronic life conditions, potentially exacerbating them by making demands that young people cannot meet or sustain over time (see Chapter Seven). There are heightened demands for bodily capacity and an ongoing exposure to a debilitating ensemble of regulatory processes that devitalise and gradually gnaw at and exhaust the mind and body.

Despite the promise of rehabilitation or re-integration, actuarial risk management withdraws the "normative guarantee" that was associated with disciplinary mechanisms, rendering the targets of control as being permanently "exposed" (Moore, 2013: 58). The young person is not excluded in advance, becoming "called upon, again and again, to transform (themselves) – not to negatively become 'normal' through the exclusion of 'abnormality'". "Taking responsibility" has a double meaning here as it is an imposed normalising mode of self-conduct required in offender management programs and literally the subject who bears the brunt of the power to punish for being unable to or failing to comply with the risk management plan.

The YLS/CMI-AA's modulation of risk case management combines networked information capture within a highly intensive matrix of interventions for managing anticipated risks and possible adverse developments. While risk interventions establish the conditions of possibility for capacitation, control equally constricts the risk subject by encircling around them more closely to modulate their movements and supply them with more palpable feedback and control. This can be characterised as a mobile form of behavioural containment. The network of risk controls positions and fixes the penal subject independently of their location while simultaneously expanding the territory of control given the risk priorities established in the risk profile (Bogard, 2007: 2). The control net is dense, mobile, and metastable: it can "adjust to the body as it moves and wherever it moves" (2007: 3). The control environment is directed outward to the young person's milieu and the regulations imposed in that open space and is also focused on their internal sense of self and the incitement to self-manage, to take responsibility for the self or resist doing so.

As a "rehabilitative" strategy, the affective relation is one of "pressured rehabilitation" that is coerced and yet that seeks to stimulate self-regulation (Day et al., 2004: 260). Risk control is more tactile, constrictive, and disabling as regulatory power wraps around the young person and incites them to behave in particular ways. It operates like an invisible harness that encloses the body at its surface, establishing a kind of "mobile confinement" that has the capacity to disable and counter their "basic capacity to resist" (Bogard, 2007: 2-3). Crewe (2011: 519-522)

has argued that this invisible harness evokes a sense of tightness or suffocation that can be experienced as extreme tension, anxiety, and powerlessness in the face of uncertainty and not knowing which way to move, for fear of getting things wrong.

4.4.1 THE TRACKING-GAZE

Crandall (2005: 20) characterises the activity of tracking as:

> […] an anticipatory form of seeing – a form of seeing that is always ahead of itself. Like in a sport, when you have to look past the ball, not directly at it.

The tracking-gaze is concerned with the fundamental technical problem of improving a prediction about the behaviour of objects and reducing the degree of contingency while it is moving. Given the young person's developmental status and provisional location within a high or medium risk zone, how can we determine their future position as "the previous movement of an object does not allow (us) to unambiguously deduce its continuation" (Sprenger, 2019: 79). Networked feedback loops help to extrapolate the future location of the young person as it is moving, enabling the target to become more reachable. The location and movements of all young people in the risk population are configured as technical variables, treated as operational elements of the actuarial network and the basis for calculations about a future location, enabling extensive processes of data collection designed to reduce the margin of error (2019: 80). In technical systems where mobile devices (such as an electronic ankle bracelet or a GPS device) are used, this operational risk intelligence network is understood as a "capture" model of data acquisition (Agre, 1994). It operates "where the individual activity produces the very data registered […] as an automatic component of the system activity itself" (Sprenger, 2019: 81). Clearly this model is not in full operation in the actuarial operational risk network; however, actuarial technical operations approximate this model rather than relying exclusively on a surveillance model of data feedback.[18]

Each targeted risk zone in the case plan – familial relations, participation in an educational, employment or alcohol and drug program, peer relations, the young person's antisocial thoughts and behaviours and so on – are vital biopolitical control points where data is captured and relayed from several authorities to the case manager to recalculate the level of anticipated risk. The enlistment of community agencies into the management plan propagates anticipatory risk logics and practices deeper into the community, reconfiguring youth services that would otherwise have a primary mandate focused on the well-being of young people. The tracking-gaze seeks to optimise networked information capture to evaluate emerging patterns in the lives of young people to determine the next phase of action as the target continues to move and develop. It seeks to apprehend "how and at what rate an object moves for the purposes of

identifying it and either influencing its movement or intercepting it" (Crandall, 2005: 20). To put this another way, the anticipated risks identified in the dynamic risk domains of the instrument become the focus for further pattern analysis. How stable is this pattern? The pattern is "put to the test" to determine its durability, whether it can be eliminated or neutralised, or whether it may get worse (Crandall, 2010: 74). New events may occur that have a bearing on the pattern, destabilising it, modifying it or amplifying it. Bodily movement is recorded as it is observed "on the ground" at any moment and across risk domains to discern bodily "transition" within each milieu in its "natural change and development" (Adey, 2010: 89). Over time, this networked data may begin to "speak for itself" as a threshold is crossed or a pattern stabilised (Anderson, 2007).

Crandall (2010: 77-74) has argued that this kind of anticipatory regime has more potential to narrow the gap between the detection of an emerging risk context and taking action to prevent an anticipated event from occurring. In many instances a transitional tendency/possibility becomes attention-worthy because it is "a disruptive occurrence, an exception, a deviation from the established norm" (2010: 73) as specified in the agreed norms in the case plan. It may be that the case plan can be partially altered to bring an unfavourable development in better alignment with other favourable elements evident in the lives of young people, or more drastic measures may be taken under conditions where unfavourable developments outweigh all other considerations. Risk case management is optimising in its operations deploying a technical system of mobile norms plotted on the interplay between "differential curves of normality (Foucault, 2007: 63). The risk distributions across the dynamic risk domains of the YLS/CMI-AA serve as the norm operating as a preventive network of operational normalisation based on their dynamism and their overall effectiveness in attaining governmental security.[19] To the extent that these calculative relations are perceived as reducing indeterminacy about anticipated behaviour, the young person is assigned a more fixed subject position that has material consequences in terms of the degree of control exercised while also having a psychic consequences that are more unpredictable to anticipate.

4.4.2 THE NETWORKED EXAMINATION

The capture and recalibration of risk intelligence data across networked risk domains is an abstract form of the examination; however, it is not operating exclusively in a disciplinary sense as the examination operates across this networked observational space to grasp how the multiple components of the planned risk intervention are working. What is the "effective reality" of this series of arranged regulations? (Foucault 2007: 47). In disciplinary regimes, the "eye of power" indicates "a line of sight, a line determined by two ends, watcher and watched" (Moore, 2013: 58)[20]. In security regimes the line no longer fixes a "proper place and distance […] (and) begins to take on a life of its own". It becomes a more continuous line of networked data capture

operating as “a means to access […] and monitor behaviour” in its movement (Van Dijck, 2014: 1478). The selective risk parameters of the YLS/CMI-AA establish and maintain the operating structure for an ongoing examination of the body in its movements across elevated regions of risk. The YLS/CMI’s risk parameters remain the “referential” (Foucault 1972: 91) that regulates and limits what kinds of evaluative statements can be made about the young person’s progress. The lowering or raising of the total risk score and its distribution across the dynamic risk domains of the instrument extends and the examination indefinitely to assess how well the young person has learnt to self-regulate as a logistical function of the calculative operations of the instrument given its valuation of a reduction in re-offending as its primary output criterion.

4.4.2.1 OBJECTIFYING RISK

As risk data sediments in Youth Justice’s client database over time, it increasingly becomes disembodied, possessing an agency that is increasingly autonomous as information is stockpiled or “held in reserve” for future action (Moore, 2013: 58). Data about the young person is objectified and external to the authors who produced it and the context in which it was created (Aas, 2004: 381-382). Diverse users can retrieve information for a range of functions without any direct contact with the young person or other stakeholders. Under these conditions other youth justice authorities can retrieve risk information from a prior assessment and assemble it into a new assessment or risk case plan given a change in circumstances (e.g., the allocation of a new case manager, the transfer of a case from community control to detention, or the return of a young person into youth justice control). This accumulating data trace increases the hazards of condemning the young person as the operations of assessment become divorced from the young person’s narrative and their experience of pain, violence, and social deprivation (2004: 383). Under these operational parameters the logic of intervention shifts from one of “understanding” to one of “preparedness […] of the ability to act […] as and when necessary” (Moore, 2013: 58; Aas, 2004: 385).

The capture of networked risk intelligence is a mode of co-individuating human-machine learning that is a calculative function of learning from the risk data together (Mackenzie, 2017: 220). Each operational site in the actuarial network is a partial observer that estimates on the empirical data it has at its disposal, being one operational domain within the overall actuarial operative economy. Optimisation is “a practice of observation” (2017: 96) that attempts to overcome the limits of observation by transforming and standardising this heterogenous data using the calculative parameters of the YLS/CMI-AA. In doing so the operative security milieu is more homogeneous in its logistics, repeatable and predictable as it captures risk information from disparate regions of the security milieu as well becoming more unified in its overall regime of risk case management.

4.4.3 BEING SEEN AND ACCOUNTED FOR

The tracking-gaze is a mechanism "through which we are seen and accounted for" (Crandall, 2005: 20). It establishes complicated circuitous relations between those doing the tracking and those being tracked where the technique is both a medium of self-awareness and self-conduct and the condition of actions.[21] The risk control parameters imposed by the YLS/CMI-AA and its tracking gaze may stimulate lines of desiring movement in alignment with elements of a risk case management plan given hopes to "make good": to become a good employee, parent or student, to attain a sense of dignity and fulfilment, to make amends and rebuild "the reservoir of goodwill and respect that most 'normal' citizens enjoy" (Halsey and Deegan, 2015: 211). Being aware of the tracking gaze may generate compliance or resistance in the young person being targeted.[22] It may also become a medium for self-reflection, self-awareness, and self-monitoring. In this section I concentrate on Youth Justice's mandatory cognitive-behavioural program used with all young people on community-based orders. This technique targets a constellation of anti-social cognitions, attitudes and values, as well as behaviours that are supposedly indicators of an anti-social personality, to facilitate self-control and responsibility in young people's conduct. Given their marginal or excluded status in the community, they are enrolled in a program of self-improvement and remodelling so that they can "get by" in the contemporary world where they are confronted with challenging life conditions and turbulent market conditions (Hörnqvist, 2010: 64-65). While these "dynamic criminogenic needs" are assumed to be changeable, the program probes the psyche and monitors conduct to determine whether the young person is amenable to change. This later function captures an intimate kind of risk data captured in a confessional relation that can be fed back into the reclassification of risk.

4.4.3.1 CHALLENGING HABITS AND REACHING TARGETS (CHART)

In the administration of the YLS/CMI-AA a series of prompts are used when interviewing the young person to begin correlating the circumstances of the offence with anti-social attitudes, beliefs, personality, and behaviour. This profiling is the first in a far more intensive examination of the extent to which the young person conforms to the high-risk profile of an anti-social person, and whether these dynamic anti-social propensities can be changed. Initially JJ implemented a cognitive behavioural program, Targets for Effective Change, as a compulsory offender program that coincided with the roll-out of the instrument. The risk case manager was required to run 12 sessions with the young person using workbook activities to replace "automatic, unskilled thinking" with "skilled thinking" conceived as being prosocial thoughts, rational and consequential thinking, and emotional competence (Priday, 2006: 421-22).

These sorts of program seek to raise self-awareness about "risky" thoughts, feelings, and actions in relation to a prescribed series of risk contexts. The young person is confronted by a range of

scenarios and asked to work through several pedagogical exercises aimed at promoting greater self-awareness about problematic thoughts, feelings, and behaviour. Over time the exercises attempt to incite active decision-making to challenge anti-social propensities and commit to a program of behavioural change. A strategy for "staying on target" is woven into these modules to promote the self-maintenance of pro-social behaviour and self-control if they become derailed or "relapse" back into deficit ways of thinking and reacting. Progress in complying with the program and maintaining motivation is used to detect individual change over the duration of the program. Given that the program is not voluntary, this cognitive behavioural program is a coercive and pressurised mode of "regulated self-regulation" that seeks to fabricate the young person as a neo-liberal entrepreneur, accountable for their own destiny. Cognitive behavioural techniques operate using an ensemble of disciplinary, regulatory, and calculative elements strategically related to the self-conduct of the young person and the network of community authorities that have been enlisted in the implementation of the risk case management plan.

CHART began being used in 2012 in NSW. It requires that all young people on community orders work through six compulsory modules concerned with "staying out of trouble" and may target further elevated risk domains identified in their risk profile (Youth Justice, 2009: 1).[23] The risk case manager uses CHART as their primary mechanism of casework supervision, while referring individuals to other offender programs in the community. The YLS/CMI-AA risk assessment modulates the frequency and intensity of how the program is used. Prior to beginning the program, the case manager explains what is involved and the young person is asked to sign a form agreeing that the program has been explained to them, that they understand its goals and that they "agree to participate in CHART to the best of my ability". Over a period of about four months, they work their way through the core exercises. Their risk profile may obligate them to participate in some or all the other modules.

From the initial sessions the young person is interpolated into a subordinate and deficit subject position that makes assumptions about their marginal or excluded location in the social structure. Hörnqvist (2010: 77) argues that cognitive behaviour programs assume that offenders are living lives filled with conflicts and frustrations that impede success because they have been unable to master a set of thinking, reasoning and problem-solving skills.[24] The individual's position in the social structure is largely ignored or, if acknowledged it is framed in terms of "the role social factors play in misshaping cognition" (Kendall, 2004: 80).[25] Located within the interpretative framework of criminogenic needs, it is assumed that offenders lack the requisite skills and values for social adjustment. In Andrews and Bonta's (2010: 58-59) conception of the "big four" risks of re-offending, offenders can be discerned along two interrelated poles: a lack of self-control and impulsivity, evident in the failure to plan ahead, poor behavioural controls in the face of frustration, failure, discipline or criticism and aggression; and, irresponsibility,

evidenced in moral shortcomings such as inadequate remorse, procriminal values, opposition to authorities and insensitivity to others (Hörnqvist, 2010: 74-76).

This deficit framing is evident in many of the exercises in CHART where young people are asked to consider scenarios that trigger negative thoughts and feelings that result in anti-social or offending behaviour. These repetitive exercises compel the subject to retrospectively identify these "triggering events" that make them angry or upset, their habitual "automatic thoughts" and the negative "emotional consequences" and behaviours that followed. By repetitively undertaking this task, they are incited to self-define the various problems that they encounter in their relations with others or the challenging situations they experience.[26] In this way poor self-control or impulsivity and anti-social values such as a lack of empathy for others become the target for intervention.[27] They are asked to identify possible "solutions" to these problems and consider the consequences of any course of action before deciding. It is assumed that they may have difficulties in identifying solutions that "fit in with the needs and expectations of other people" and will need to be encouraged to incorporate these views and the consequences of any course of action on others (Youth Justice, 2009: 34).

In the first three sessions of CHART, young people are asked to "map their offences", promoting admission of responsibility and self-surveillance.[28] They are asked to identify the factors linked to their offending behaviour, and then reflect on the circumstances surrounding the offence that brought them under control: the thoughts and feelings leading up to the offence, during the offence, after the offence and the situational and temporal "red flags" that indicate the poor choices, thoughts and anti-social values or beliefs that contributed to the offence.[29] Hörnqvist (2010: 73) argues that at the conceptual level the target area for intervention is vague, operating "on the basis of a series of pro-social-anti-social dichotomies, rather than on the distinction between the legal and illegal". The strategy to target anti-social values and behaviours is generalisable to other "risk-laden" contexts. In the core modules it is applied to the young person's relations with others that trigger anti-social responses, asking for help, managing stress, lifestyle choices and the people the young person spends their time with. In the optional modules this is further extended to establish self-responsibility and self-control in the contexts of relationship skills, responding to put-downs, frustration or situations that make them angry, harmful, or abusive relations, alcohol and drug use, finding accommodation and "staying put", and money management.

These exercises establish an ongoing confessional discursive/power relation where the young person is both the "speaking subject […] (and) the subject of the statement" (Foucault, 1978: 61) who painstakingly provides an account of their offence in the presence of an "authority who requires the confession" and who has the power to intervene in productive and coercive ways

in relation to the "truths" that emerge over the course of the program. The confession extends beyond the offence, modulated by an imposed self-reflection on of the thoughts, feelings, motivations, and actions that accompany the act. Whether or not the young person demonstrates remorse for the offence, acknowledges their faulty thinking or lack of self-control and commits to a course of self-improvement are constitutive metastable elements in the way in which the case manager strategizes with them to establish and reinforce motivation as well as becoming the material that informs their calculative re-assessment of risk and intervention over time. As a technique designed to incite self-control and responsibility, the exercises in CHART establish an active learning conversation between unequal parties aimed at generating "intrinsic modifications" (see Foucault, 1978: 62) in the young person by probing in an intimate way into their affective life. Through a mediated self-reflection they are encouraged to take an active role in their own self-government and self-surveillance under the normalising promise of a better life.

It would be inaccurate to describe CHART as a technology of the self in the light of its coercive character and the routine way in which its pedagogical strategies assume and enact the subordinate social position of "participants".[30] The kind of self-reflection and self-management that is encouraged in CHART is facilitated using an ensemble of directed tasks, imposed summations of problems that should be worked on, definitions of appropriate and inappropriate behaviour, routine target setting, implementation of weekly plans and monitoring of outcomes, and practising skills using role playing and application in situations that have been identified as problematic for the young person. CHART provides 100 structured worksheet activities that direct the young person to identify "red flags" that generate trouble, complete diaries about moods, thoughts and behaviour or how they spent their time over the course of the week, make inventories that identify negative thoughts, "cool thoughts" or positive self-talk that deescalate conflictual situations, identify situations that make them angry and take quizzes that list the thoughts that get them in trouble.

In some of these exercises they are asked to complete a checklist and tally their total score and are presented with an interpretative scale that informs them whether their behaviour, thoughts or anger levels are within an acceptable range of conduct. For example, Worksheet 51 is an anger inventory that tallies their responses and tells them if their feelings of anger are "generally well-controlled", above average and may need some anger management strategies, or are of serious concern and "probably causing you and others big hassles" (Youth Justice, 2009: 59-60). While some of the exercises might facilitate the self-motivation to try to change behaviour, there are others that impose a definition (e.g., "your anger is not under sufficient control").[31] These boundary-establishing moments are typically followed by instruction on what constitutes the nature of the problem (e.g., violence, abuse or coercion, lack of empathy for others) and then a

series of activities are undertaken that resume asking them to complete inventories that identify the elements that constitute faulty thinking, getting wound-up and so on. The exercises typically direct them to prepare for conflictual, high-risk situations or other problematic situations and establish goals or plans to be practised over the coming week, providing material for discussion at the next session.[32]

Hörnqvist (2010: 79-83) describes the combination of "needing to be told what to do" with the use of concrete activities such as role-playing or guided self-talk to practice pro-social behaviour and self-control through repeated practice of the correct response in problematic contexts as a class-based psychological strategy. Rather than adopting an exclusively insights model of cognitive-behavioural therapy, CHART uses a mode of intervention designed for "the poor", adopting the responsivity principle that matches the program to the ability and learning style of the offender.[33] This paternalism that operates more directly on the body and mind raises questions about its appropriateness given the developmental status of young offenders who may be as young as 12 years of age and who may have a cognitive disability, mental health issues and/or a history of complex trauma.[34] If the brain is still developing into early adulthood, can adolescents meet the pressures to use complex negotiation skills, self-reasoning and forethought in approaching challenging situations? Their frontal cortices are the last to achieve structural maturity, that part of the brain responsible for high-order reasoning and executive control (the fluid co-ordination of cognition and emotion, goal-directed planning and forethought, and impulse control) (Giedd et al., 1999: 861-862, cited in Maroney, 2009: 99).

CHART asks young people to summon sufficient forethought to define numerous problem contexts, gather information about how they reacted in these situations, generate alternative actions that incorporate strategies for regulating faulty thoughts, increasing self-control in the face of triggering events, and using complex interpersonal, negotiation and assertiveness skills (Youth Justice, 2009: 28-34; 49-57). Many of these practice areas are prescribed in situations involving admitting and apologising for doing something wrong, responding to others' complaints about their behaviour at home, school or work, empathising with others, responding to put downs, negotiating peer relations to avoid getting into trouble and managing emotions. Moreover, they are asked to develop a "relapse prevention plan" for anticipated high risk situations under the expectation that they will automatically enact a safety plan to prevent re-offending (2009: 43).[35] The relapse plan challenges the assumed anti-social propensities of offenders where a "lapse" is considered a warning sign that requires self-control in how they respond to a "slip" back towards prior patterns of behaviour.[36] This responsibilises them to get "back on track" to avoid a downward spiral that would eventually result in a breach of their control order.

CHART's strategy for encouraging adolescents to maintain behavioural change over time has been derived from a model for comprehensive treatment for adult patients with long-term addiction difficulties developed in the 1980s (see Prochaska and diClemente, 1986). The model assumes that patients work through four stages where they initially don't see that they have a problem, begin to contemplate on the negative aspects of drug and alcohol behaviour, consciously decide to change and act on this to maintain change and plan for and manage lapses to secure long-term change. Like many offender programs in youth justice, the treatment model has been developed for an adult population and transported to youth justice with little consideration for the developmental capacities of young people, the relatively short time that the young person is involved in the program and the limited time-frame of intervention.[37] Many young people are more likely to be at the "contemplation" stage of readiness to change and may have developmental and other issues that impede their capacity to effectively participate and maintain change over time.[38] These impediments may be interpreted as an absence of motivation or resistance to pursue pro-social courses of action.

Hörnqvist (2010: 77-78) characterises cognitive behaviour programs as using a rehabilitative strategy that holds the offender responsible for modifying their behaviour so that they will be accepted by others, including family, teachers, and employers. Their impulsive reactions in stressful situations are targeted along with a failure to act responsibly in the marginal social position that they occupy and the obstacles they encounter. During their time under Youth Justice community control the governmental goal of social inclusion is pursued; however, the "outcome of the risk management in terms of social inclusion is secondary" (2010: 66). Given the low levels of educational attainment and poor prospects for employment of young offenders, there is a preparedness to manage any outcome, independently of whether the young person complies with the normative pathway embedded in CHART.[39] If non-compliant while under community control they can be returned to the Children's Court for transfer to youth detention; at the time of exit from control, they are targeted for community-based hybrid welfare-offender programs and/or the active job-seeker requirements for income support with Centrelink. In any given apparatus of government, the same population is exposed to capacitating and coercive interventions that entrench their socioeconomic marginality and where the only escape route is wage labour and independent living (Wacquant, 2008: 29).

4.5 CONCLUSION

This chapter has mapped the way in which the YLS/CMI-AA operates across its internal domains of operation and how this modulates the ongoing risk assessment and case management of young offenders so that they function in synchrony with one another. I have provided a novel account of this process as being an individualising, transductive operation that unfolds on a

plane of immanence across the instrument's four sub-domains of operation. A transoperative rapport is established across what would otherwise be divergent or more arbitrary relations that retain a larger margin of indeterminacy. The instrument's data infrastructure (i.e. its risk codes) and its enunciative case classification rules are "put into relation" with each of the four operating domains as a modulating transductive operation. As risk information crosses thresholds of calculation and signification in the communication of information from one domain to the next, a more dynamic and active modulation is achieved across the technical ensemble that channels risk case management and its networked relations. The abstract schema that Andrews and Hoge (2003) concretised in the YLS/CMI is actualised as the risk case manager and the technical object establish co-individuating relations because of the recurrent causality of relations across these operating domains.

This co-individuating transductive process has a propensity to propagate across other domains such as line supervision, across divergent operational sites, including community agencies enlisted into risk case management. The more these co-relations multiply, there is an amplification and saturation of actuarial relations across the collective Youth Justice milieu. The reciprocity of relations between individuals and the collective, establishes a "functional solidarity" in Youth Justice in alignment with the determinate risk parameters of the YLS/CMI-AA. The instrument's capacity to establish a recurrent causality across these heterogenous domains produces more stable and homeostatic relations as they are operationalised in the associated milieu, placing a limit on variation in the collective milieu.

As part of my analysis, I have drawn attention to the metastability of risk classification and risk case management as an active co-individuating relation. The requirement that the risk case manager re-assesses the level of risk establishes the conditions of possibility for phase-shifts in the technical individualisation of risk case management as new calculative thresholds are crossed. This informational passage not only increases the likelihood of exercising greater regulatory control over young people, but it also has the capacity to challenge or alter the subject's subjectivity. As a technical operation the reclassification of risk has a multifunctionality. It operates as a defence mechanism for managing the inherent indeterminacy of the original prediction as well as the uncertainty of the outcomes of intervention. It provides a mechanism for optimising security in the milieu where risk interventions are undertaken, which I contend enhances the capacity for the anticipation and modulation of risky bodily movement. It provides a reward/punishment structure for the behavioural management of young people. It establishes a recurrent causality of relations where there is an enhanced reciprocal conditioning between the operations of the technical object and its associated milieu. And the recalculation of risk provides system-wide evaluative data that can be used to audit and recalibrate offender risk management in the youth justice milieu.

I have characterised this mode of security management that sets both the watcher and the watched into “circulation” as a networked anticipatory form of seeing and control that establishes complicated circuitous relations between those doing the tracking and those being tracked. Everyone is held accountable by the risk parameters operationalised in the instrument, where networked control becomes more standardised and where risk data can be stockpiled and more quickly relayed across operational sites. This anticipatory regime not only increases the potential to narrow the gap between the detection of an emerging risk context and taking preventive action, but it also functions as a medium for self-awareness and self-conduct. As a moving target young people are subjected to a program of conditional self-improvement, an intensive regulated self-regulation is implemented. This exposes them to biopolitical conditions that are both capacitating and disabling. The tactics of risk case management incite neo-liberal capacitation and operate as a mobile form of behavioural containment that curtails and contains their movements, supplying them with a more palpable feedback and control. This mode of control is embodied in the use of the CHART cognitive behavioural program used in NSW that operates in conjunction with the risk management of young people as it is modulated by the YLS/CMI-AA.

CHAPTER FIVE: TECHNICAL UTILITARIANISM – THE META-ANALYTIC NORMALISATION OF ACTUARIAL PREDICTION

5.1 INTRODUCTION

This chapter examines a vector of actuarial research where instruments such as the YLS/CMI become the subject of evaluative work to make more authoritative claims about their predictive accuracy as well as their capacity to anticipate and manage risks for different populations of offender (e.g., female or ethno-racial segments of the offender population). Meta-analytic research of this kind is conducted by an international network of researchers who have taken responsibility for investigating technical difficulties associated with these instruments. Logistically the results of these evaluations have the potential to restructure the operations of actuarial instruments across new technical thresholds in events where significant information about problematic elements of their functioning are made more visible. My line of investigation is a departure from the previous three chapters that have focused on the technical individualisation of the YLS/CMI in Youth Justice. This chapter investigates the operations of meta-analytic research to consider to what extent this evolving power-knowledge formation has regulated the operations of the YLS/CMI and assisted to mediate successive stages of concretisation in its operations.

The technique of meta-analysis is a domain of technical specialisation that is external to the technical object; however, the technique can be understood as a transducer that has the potential to mediate the margin of indeterminacy between the regime of functioning of the technical object and its operational domains in a more open-ended way (Simondon, 2017: 155). To put this another way, meta-analyses perform a regulative function, if the resulting informational signification is concretised in the technical object to advance its technicity. In Chapter Two I briefly mentioned that the developers of the YLS/CMI instruments relied upon future meta-analytic research to validate the instrument rather than doing this at the time of constructing it. Not only have these developers participated in meta-analytic research about their instruments' operations, but many of the other researchers also involved in this research have an alignment with the Ottawa School.

The first part of the chapter outlines the technique of meta-analysis as a transductive operation that provisionally localises the margin of indeterminacy in an ensemble of individual evaluations of predictive accuracy and the other psychometric properties of actuarial risk assessment instruments, including the YLS/CMI. I consider this mode of technical activity in relation to Simondon's (2017: 135-159) conceptualisation of transduction and the role of humans as

transducers or mediators of the operations of technical objects. In this sense humans who feel that they have a responsibility for the functioning of the technical object can modify the existing operations and functions of the technical object at critical periods and points by information coming from the outside that establishes a new threshold of functioning. Simondon's account of technical activity and technicity challenges us to think critically about the operations of meta-analyses as this domain of technical specialisation has a narrow-mindedness about the role of information founded on a technical utilitarianism rather than the reflexive technical activity that Simondon (2017: 226-241) associates with critical engagement with problems or conflicts in the technical object's functioning and its wider relations within the ensemble in which it operates. The kind of technical mentality that he advocates involves a technicity that anticipates solutions that engage with a technical object's operational schema and how its elements can be decomposed and restructured to improve its regime of functioning integrating technical and social concerns.

The remainder of the chapter examines the role of meta-analyses in mediating criticisms that the LSI family of instruments are discriminatory in relation to gender, ethnicity, race, or other structural concerns. I argue that these criticisms, which have frequently been made at a representational level, bear little weight on how these concerns are mediated by the technical operations used in meta-analytic research. I concentrate my analysis on meta-analyses about gendered differences to make my argument. Because the bulk of local evaluations of instruments such as the YLS/CMI are conditioned by the standardised risk parameters that the developers concretised into the instrument, when meta-analyses assemble and attempt to normalise this data as a larger dataset, the analysis inherits the built-in constraints of these parameters. Therefore, there is limited risk data available that has the capacity to sufficiently examine alternative risk parameters to properly mediate the criticisms that have been made. I contend that meta-analyses tend to legitimate the exiting mode of operations of these instruments rather than foster critical phase-shifts in the technical individualisation of the technical object.

5.2 META-ANALYSES AS A TRANSDUCTIVE OPERATION

To begin my account of the role of meta-analyses in the mediation of the operations of instruments like the YLS/CMI I describe the technical mentalities and operations that guide this research. A meta-analysis is a technique used to compare the results of a series of studies that make singular claims about the effectiveness of a treatment program or the predictive accuracy of an instrument (Rosenthal, 1991). The thrust of meta-analysis is to synthesise the findings from these studies to determine the relationship between any variable *X* and any variable *Y* to estimate the magnitude of the relationship (the "effect size") and to provide a statistical

endorsement (a confidence level) that the estimated effect size is accurate and reliable (1991: 2). In Rosenthal's account of meta-analysis, it is scepticism that drives this enterprise as he stresses that a meta-analysis does not mean when it refers to the results of a study:

> We do not mean the conclusion drawn by the investigator, since that is often only vaguely related to the actual results. The metamorphosis that sometimes occurs between the results section and the discussion section is itself a topic worthy of detailed consideration. For now it is enough to note that a fairly ambiguous result often becomes quite smooth and rounded in the discussion section, so that reviewers who dwell too much on the discussion and too little on the results can be quite misled as to what was actually found. (Rosenthal, 1991: 2)

The meta-analysis functions as a technical audit that presumably holds the developers of prediction instruments and others who evaluate an instrument's predictive accuracy in a local jurisdiction accountable to a set of standardising norms, at the expense of accountability to other sets of norms (Rose, 1999: 154). Power (1999: 66; 2000, 113) understands this as a mode of government involving the "control of control". He considers that audits can operate "from below" to promote self-regulation as an effect of communicative relays if they increasingly resonate with one another. However, in the kinds of meta-analyses conducted in this field the meta-analyst stands above the technical object and its operations to adjudicate on its relative functioning without necessarily establishing any close relation with the instrument itself or its developers.

The meta-analyst aggregates samples of discrete data captured from evaluations about the predictive accuracy and other psychometric properties of each instrument under scrutiny. The data in these studies may have used different measures of predictive accuracy as well as making several other methodological decisions about the length of time used to track recidivism, the way in which data is coded and so on that establish variations in each study's findings because of these contingencies. Each local evaluation is comprised of disparate, and singular indeterminacies which are mediated by meta-analytic techniques of normalisation. Aggregated data is standardised to conduct the evaluation and subsequently make claims about the relative relations between the studies and the relative efficacy of different kinds of predictive instruments. Meta-analyses establish a relational transductive operation where localised data is fed-forward, disaggregated, recoded, and transformed to recalculate the aggregate data as a standardized estimate of predictive accuracy. The data and its threshold of significance is then fed-back into local, regional, national, and transnational circuits. At critical informational thresholds, this (may) mobilise new lines of action to modify the instrument's operations or even abandon using it. The meta-analytic information derived from these analyses functions as a

transducer in a far wider technical network, relaying a momentary and variable determination that potentially provides an opening for technical action to a new future (Mackenzie, 2002: 26, *fn*3).

Simondon (2017: 17) locates a technical object's potential for new stages of concretisation in its margin of indeterminacy, enabling it to remain open to "outside information". He proposes:

> The machine endowed with a high degree of technicity is an open machine, and all machines taken together […] presuppose [humans} as their permanent organiser, as the living interpreter of all machines among themselves. (2017: 17)

The regulation of a technical object's operations by humans is a transductive operation that attempts to bring about a greater degree of determination in a technical object's schema of functioning given a "margin of indeterminacy" in its functioning (2017: 156). The transductive operation puts different kinds of information that conflict with one another into a relation to produce a new informational entity (Iliadis, 2013: 11). In the case of meta-analytic research, localised disparities in information about the operations of the YLS/CMI are relayed into the meta-analyst who operates as a transducer by receiving this information to mediate its margin of indeterminacy. The meta-analyst is literally a transducer that through the intermediary of the technique of meta-analysis can temporarily localise the technical object's indeterminacy by adding determinacy "in instants that are sensitive and rich with possibilities" (2017: 153, 156). The operation of transduction helps to follow the critical phases when a technical object resolves incompatibilities and different potential in its functional schema to continue its technical individualisation. Moreover, any event of determination is not fully determined, which enables it to "cycle through the critical stages" (Mackenzie, 2002: 26, *fn*3). I am limiting my account of transduction here to the role of meta-analysis in the mediation of the essential indeterminacy of the technical object. Over time meta-analyses transduce information repeatedly because each informational event momentarily suspends its relation to the present, thus retaining a margin of indeterminacy which enables it to continue receiving information.

5.2.1 THE META-ANALYTIC TECHNIQUE

Typically meta-analyses of predictive accuracy use a search engine to capture all published research about predictive accuracy up until the time of the meta-analysis.[1] Unpublished data is sometimes included, this being dependent upon the meta-analyst's alliance with a network of others invested in developing and evaluating actuarial instruments.[2] The meta-analysis captures the sum total of local estimates of effect size at a moment in time to estimate the overall effect size, generating a provisional truth that figures along an evolving technical lineage. By standardising the differentials in data using measures such as the Area Under the Curve (AUC)

(see Section 5.2.2), it is asserted that the findings are a more representative and "true" measure of the instrument's predictive power.[3] Even though the dataset is constantly expanding over time, the data remains small in volume, limited to samples and slow in velocity, possessing a weak to strong relationality, a low to middling scalability and a heterogeneity of characteristics given contingencies in methodological quality in both the singularities of the studies and the meta-analysis itself (see Kritchen, 2014: 28).

Data capture remains a selective process[4] where some studies are excluded because of decisions made by the meta-analysts or because the research has never been published (Rosenthal's "file draw problem").[5] Data is extracted from each of the studies and is standardised using a coding system to establish a system of equivalence so that the data can be tested using the meta-analyst's selected measure of effect size. Any study's measure of effect size is recoded, and the "moderator" variables are coded to make a more granular analyses of contingent variables that may influence the magnitude of effect size. These include the type of prediction instrument, publication status, sample characteristics (size, gender, ethnicity, race), sampling frame (probation, detention etc), measurement strategy and length of follow-up.

Four years after the YLS/CMI started being sold through Multi-Health Systems, the first two meta-analyses that included information about the YLS/CMI were published (Schwalbe, 2007; Edens et al., 2007). I confine my description here to Schwalbe's meta-analysis, as the other analysis was primarily concerned with the Psychopathy Checklist, Youth version.[6] At that time, Schwalbe considered that the predictive validity of instruments used with young offenders remained unknown. He evaluated the predictive accuracy of 28 instruments that were tested on 33 samples. Overall, 53,405 young offenders provided the raw data for the meta-analysis, where 45% of these offenders re-offended. The individual effect sizes reported in these studies varied, ranging from an AUC estimate of .532 and .780. Eleven studies reported estimates for the YLS/CMI that were in the same range (AUC = .571 - .750). On average these instruments demonstrated a "medium effect" (AOC = .640) being only 14% better than chance in predictive utility. The average association between risk assessment instruments and youth recidivism (r = .25) was lower than the average effect reported in Gendreau et al.'s (1996) meta-analysis of instruments used with adults (r = .30). Despite these findings, Schwabe (2007: 458) concluded that this finding "lends support to the continued use of risk assessment instruments in juvenile justice settings".

Subsequent meta-analyses have not demonstrated any further significant gains on this normed measure of predictive accuracy. Estimates remain in the medium bandwidth of predictive accuracy at roughly r = .32 despite the growing mass of data. The YLS/CMI has been shown to be the most effective in predicting general recidivism, marginally better at predicting nonviolent

recidivism compared to violent reoffending, and weaker at predicting sexual recidivism (Olver et al., 2009: 42; see Schwalbe 2008; Olver et al., 2014). What does this statistic signify? If the statistic is converted to a measure of AUC, then an *r* value of 0.32 = 0.68, which indicates that any randomly selected recidivist has a 68% chance of scoring higher on the YLS/CMI. Given the instrument's selection of three cut-points (high-, moderate- and low-) this measure obscures the distinction between those young people classified as moderate- and high-risk who are the primary targets of risk interventions. In addition, the authority of this *r* value is undermined by the high levels of variability between samples and their research design that impact in complex ways on any study's estimate of effect size. Subsequently, an elaborate defence structure using statistical controls is built into the research protocol to manage these confounding variables that have an unknown impact on effect size. In the meta-analytic cognitive schema these are the moderator variables that are factored into the meta-analysis.

Lipsey (2003: 69) states: "moderator variables are the keys to explaining differences across studies in the outcomes observed". These moderators (e.g., whether or not the study estimated effect size on its estimation sample or a validation sample, gendered differences) introduce a considerable degree of indeterminacy into estimates, as these moderators may be related to the study's estimated effect size and to one another. Lipsey characterizes these interrelationships as clues that the meta-analyst can explore to begin to discern which of these moderators have the greatest influence on effect size. The discernment of influential moderators seems something like a Pandora's Box as the meta-analyst may identify what seems to be an important moderator that may stem from another, quite different moderator variable (2003: 70). To disentangle these relationships, "statistical control must be used in place of experimental control".[7] This reliance on statistical control places a limit on alternate exploratory pattern analyses that could be conducted in localised jurisdictions in a more open-ended way to explore these "confounding" variables and discover new informational differentials, relations, and possibilities. Without experimental data practices, there is a risk that the trajectory of research will continue to reproduce the patterns implicit in the existing risk parameters of the instruments under examination (see Mackenzie, 2017: 83-86). There is a tension between the meta-analyst's operational reliance on measures such as the AUC to transform and regulate data captured from local evaluations, at the expense of learning from the data as the observational parameters remain too restricted. If a technical object is going to cycle through critical phases, rich in possibilities, "it must stand in relation to something other than itself in order to become something else" (Mackenzie, 2002: 26 *fn*3).

In Schwalbe's (2007: 458) analysis of moderator effects a series of probability models were subjected to a regression analysis to identify statistically significant moderators. His analysis found that the estimation of the effect size was influenced by whether the instrument was

validated using an estimation sample or by using another validation sample as well as the sample type – this accounted for accounted for 42% of the variance in effect size; "third generation" instruments such as the YLS/CMI accounted for an additional 17% in variance. Overall, the effect sizes were greater for third generation instruments, where the estimate was not cross validated, where the sample used was from general probation type settings and validated on smaller samples. This is quite revealing as the research used to legitimate the YLS/CMI inflated validation estimates given these methodological limitations. Schwalbe considered that the validation of instruments for use with young offenders had not been sufficiently validated using multiple samples. In the case of the YLS/CMI, the wide variation in local estimates of effect size gravitate to *r* = .30 as an effect of statistical regression (2007: 459; see Olver et al., 2009: 342).

The implied authority of aggregating all local evaluations together is undermined by these moderator relations. Furthermore, the selective decisions of the meta-analyst about which moderators they consider and their choice of statistical controls impact on the authority of any conclusion. Schwalbe (2007, 2008) was criticized in terms of his sampling strategy by the Ottawans as he did not include unpublished studies in his meta-analysis (Olver et al., 2009: 333). This classic "sampling error" has been considered by adding a further technique of control to bolster the authority of the reported effect size value, the fail-safe *N* (Rosenthal, 1979; Orwin 1983). *N* is derived from an algorithm that tests the extent to which file draw studies might have a nonzero mean effect size or some influence in a range of values around zero (Orwin, 1982: 157-158). It is a heuristic device that estimates the number of missing studies with a predictive validity of correlation .00 that would be required to bring a meta-analyst's estimated effect size (*r, d,* AUC) below Cohen's (1988) threshold for a small effect size (*r* = .1).[8]

5.2.2 TECHNICAL UTILITARITARISM

In the previous section I have argued that the technical operations used in meta-analyses impose a limitation on what we can learn from evaluations about the capabilities of instruments like the YLS/CMI as each new meta-analysis inherits the instrument's past conditioning, its built-in constraints that have been structured into its risk codes that are now being modulated within a wider informational and standardising network of technical relations. Subsequently, these operational parameters are reproduced over time with each successive meta-analysis. Having achieved a relative degree of functional autonomy, an instrument like the YLS/CMI is able to "maintain itself homeostatically" (Massumi, 2012: 230). Its individualised parameters of operational functioning tend towards establishing an equilibrium of functioning rather than establishing the conditions invention that would continue its individualisation at a new threshold of metastability or concretisation (see Simondon, 2017: 31, 63; 2012: 7).

Simondon (2012: 3-4) supposes that, to draw out the new informational potentials that would further concretise the technical object's operations at a new threshold of functioning, a technical mentality is needed that is attuned to its technicity of operational elements. This involves an intuitive capacity to distinguish between the technical object's sub-domains and their relations of "relative solidarity" to anticipate a solution to a threshold technical problem that would accomplish a structural reform to some of the components of the technical object's domains of operation to realise a greater latitude of open-ended multifunctionality and convergence of relations. I contend that the calculative practices used to validate predictive instruments are additionally limitative on the evolution of these instruments because they are driven by a technocratic cognitive schema, a mode of technical utilitarianism. Measures such as AUC regulate the heterogeneity in data using a calculus that prioritises the most efficient and cost-effective way of managing a ratio of false positive and false negative predictive errors to net as many high-risk offenders as possible as the chief way of endorsing the instrument's mode of operation. A combative security logic is imposed upon the evaluative process that places value on identifying elevated levels of risk above other elements of the instrument's operations. This contrasts with using a technical mentality that is attentive to the decomposability of the elements of the instrument and how its operational domains can be restructured to achieve a more "'operational solidarity' – and thus an effective continuity" at a new threshold of functioning (Massumi, 2012: 26).

5.2.2.1 ESTIMATING THE PREDICTIVE ACCURACY OF A PREDICTION INSTRUMENT

The measures of predictive accuracy used to endorse a prediction instrument define and delimit a complex ethical and legal concern about the deployment of anticipatory technologies in the operations of justice as a determinate problem about "errors of prediction". When an offender's risk level is calculated this can result in "false-positive errors" where an offender classified as high-risk does not reoffend if given the opportunity, and "false-negative errors" where the offender is classified as low-risk and reoffends. These errors signal quite different kinds of "social cost" (an injustice justified in the name of precaution in the event of a false-positive, and a threat to public safety in the event of a false-negative). Establishing a threshold of tolerability of error between these two costs is a mode of technical utilitarianism where statistical techniques are used to legitimate the instrument and its margin of error by discerning an "acceptable ratio" of false-positives and false-negatives. If the resulting estimation of this threshold meets an acceptable level of statistical significance, then the instrument's risk classification schema is considered adequate and any concern about those individuals who are the victim of error is evaded.

Technical utilitarianism effectively defends the actuarial enterprise against "outside" forces that problematize the injustices that occur when predictive error has material consequences for

young people. With some audacity, Moore (1986: 328) called this utilitarian threshold of tolerability "virtuous" in that it is "balanced" in favour of placing the collective burden of risk on the "worst" offenders who are responsible for a disproportionate number of crimes. In addition, the classification rule and its schema of tolerability provides a cost-effective solution to the general question posed by developing preventative measures and organising punishment around the average rate of criminality and the distributed relations of deviant normalities for young offenders: how can youth crime be kept "within socially and economically acceptable limits and around an average that will be considered optimal for a given social functioning?" (Foucault, 2007: 5).

One of the first measures of predictive efficiency to emerge in prediction in criminal justice in the 1980s was the relative improvement over chance (RIOC) (Loeber and Dishion, 1983: 71-73). [9] RIOC uses a probability equation that calculates an instrument's capacity to improve prediction over chance as a function of the difference between the percentage of random correct (RC) and maximum correct (MC) values. The closer the estimate is to 0, an instrument is no better than chance, and the closer to 1, the instrument is closest to achieving maximal proportional reduction in error. Not only are these measures used to evaluate a prediction instrument's predictive accuracy, but they are also used to legitimate the classification decisions that establish an instrument's cut-point. In technical terms, the selection of the most efficient cut-point, *k*, establishes the classification rule for predicting levels of risk. For example, if a developer has identified seven predictor items and each item is scored dichotomously (0, 1), then an individual's predicted score can potentially range anywhere between 0 and 7. Each score provides a possible cut-point for dividing each sample according to the level of risk. The selection of the cut-point attempts to optimize the instrument's predictive utilities.

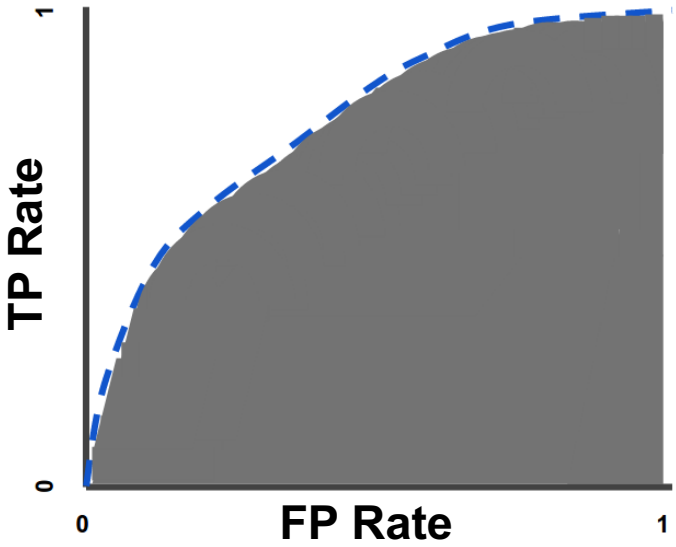
The RIOC value is a function of positive and negative utilities. Using the aggregate data for the sample's risk classifications it is possible to estimate the rate of "predictive efficiency" for each possible cut-point to determine the score that demonstrates the expected utilities (a measure of the overall costs and benefits of the cut-point). In Figure 5.1 below, Blumstein et al. (1985: 202-206) used RIOC to establish a predictive instrument's "cut-point" of 4 to identify chronic offenders using data from when they were 8-10 years old.[10] To net 15 actual chronic offenders, an additional 30 innocent young offenders would need to be captured within the network of control according to their utilitarian ratio of "civil libertarian concerns".

Figure 5.1 A prospective probability model for predicting risk based on observations of children's behaviour at 8-10 years of age for predicting chronic recidivists at the time of their first conviction and the instrument's predictive efficiency (Source: derived from Blumstein et al., 1985: 204, Table 4)

Z*	True Positives C(Z*)	False Negatives N(Z*)	False Positives P(Z*)
7	1	22	1
6	5	18	7
5	9	14	15
4	15	8	22
3	20	3	40
2	20	3	55
1	21	2	84
0	23	0	109

More recently, the benchmark standard for measuring predictive accuracy is the receiving operating characteristic (ROC area or AUC, i.e. Area Under ROC Curve) (Mossman, 1994; Swets, 1996; Swets et al., 2000; Rice and Harris, 2005: 618). It measures the rate of true-positives and false-positives rate at all the possible cut points in the instrument. AUC measures the area under the curve's false positive rate (see Figure 5.2). ROC is the probability curve and AUC estimates the probability that a random positive is positioned to the right of the curve relative to a random negative. That is, it estimates the instrument's probability that a randomly selected reoffender will have a higher risk score than a randomly selected non-reoffender. The closer the AUC score is to 1, the greater its predictive accuracy; at 0.5 the instrument is no better than chance in its prediction accuracy.

Figure 5.2 AUC (Area under the ROC curve) (Source: https://developers.google.com/machine-learning/crash-course/classification/roc-and-auc [accessed 28 March 2023])



ROC analysis can be traced back to signal detection theory developed during World War II for analysing radar images to discriminate whether a blip on the screen represented an enemy target or a friendly ship or whether it was just noise.[11] In the 1950s this began to be used as a model for understanding perceptual decision-making behaviour concerned with signal detectability (Peterson et al., 1954; Green and Swets, 1996). An observer observes a signal event (e.g., a visual or auditory signal) that is relatively difficult to discern, and the success or failure is recorded across its four possibilities that are equivalent to the Neymar-Pearson type-I-type-II error statistical decision theory: a signal is detected (hit), it is not detected (miss), a non-signal event is correctly perceived as containing a signal (correct rejection), or a non-signal event is incorrectly perceived as containing a signal (false alarm) (Clear and Barry, 1983: 534). Each of the four outcomes is assigned a utilitarian score reflecting the worth of hits and correct rejections, and the costs of misses and false alarms. The probability of the signal is assumed to be known, and analysis can determine the discriminatory power, or "sensitivity of the observer", given the instrument's choice of an optimal cut-off point of signal detection.[12] The AUC estimates the sensitivity of the effect size of the cut point, thus endorsing both the value of the developer's selected cut-point and the predictive capabilities of the instrument.[13] As demonstrated in the next section this kind of valuation of predictive accuracy also mediates an instrument's norms in relation to gender, race and other structural characteristics of offenders.

5.3 THE TECHNICAL INFORMATIC ENCOUNTER WITH DIFFERENCE

The use of actuarial risk assessment instruments with women, First Nation peoples, culturally diverse sectors of the community and (dis)ability remains a vexed problem in relation to actuarial justice. Questioning whether instruments such as the YLS/CMI should be used at all or modified in some way to become more gender-, racially-, culturally-, or disability-appropriate pose a challenge at an ontological level that is incommensurable with the individual level of analysis encoded into these instruments. The will-to-truth and the biopolitics of these polarized epistemes provide minimal conditions for negotiation. Within the actuarial technical milieu, the problematization of difference is a relation that comes from the outside and that deploys politico-discursive strategies. As a force relation, it registers within a technical milieu as a threat and is reframed and delimited as being a technical problem that is adjudicated within its epistemic techno-scientific engine. The technical milieu assumes the upper hand, taking charge of mediating relations of incommensurable orders of magnitude.

Writing in 2004, amidst the rise of the "informatization of culture", Terranova argued that the emergence of informational dynamics had caught the more militant strands of cultural politics by surprise (2004: 8-9). This would seem to also be true within the field of critical criminology, where most critiques of actuarial justice are more likely to be waged in socio-cultural terms. The last 30 years of the 20th century had established a cultural politics founded upon identity, representation and difference and how cultural struggle is waged within a representational space, marked by the self and Other. Politics was conceived in terms of resistance to dominant meanings, where tactics were tied to the field of representation. Within an informational milieu and its informational dynamics, meaning is no longer the first level of signification, rather it is "the (informational) milieu which supports and encloses the production of meaning" (Terranova, 2004: 9). There is no meaning outside of this informational milieu that both "exceeds and undermines meaning from all sides" given the materiality of the flows of information and their incessant operationalisation using metastable mathematical analyses and manipulation.

5.3.1 CONTESTING GENDER AND RACE NEUTRALITY

Hannah-Moffat has been a persistent critic of risk tools, questioning the capacity of the LSI-R and the YLS/CMI to adequately address gender and Aboriginality.[14] Some of her earlier work on this was commissioned by the Status of Women Canada (Hannah-Moffat and Shaw, 2001) and the Department of Justice Canada (Hannah-Moffat and Maurutto, 2003). In broad terms these instruments are criticised as being discriminatory, placing excessive or misguided controls on the subject of difference as a consequence of sampling bias and norms that assume that the subject of law and punishment is an entrepreneurial, rational, white male. On the one hand,

many existing items in these instruments are accused of being unable to discriminate between particular minority populations (e.g., being unemployed where a disproportionate number of members from different identity groups would share the "risk"). At the same time, predictor items are pre-coded in such a way that they amplify systemic discrimination (e.g., as a result of disadvantage, systemic racism). Predictor items may both fail to discriminate and discriminate, resulting in underestimates and overestimates of recidivism for different categories of subject.

Hannah-Moffat's problematisation of gender and race began around the time that these instruments were proliferating in adult corrections and later in youth corrections.[15] Given her subject position as a consultant, problematisation was predicated on the necessity of classifying levels of risk. Subsequently her frame of reference was confined along two alternatives that largely focus on the anticipatory pattern analysis of item construction and its validation. The existing instruments (developed by men using largely adult male samples) could be modified so that they are sensitive to gender. Alternatively, a feminist standpoint could be adopted, and beginning from the ground up, "a gendered and ethno-culturally sensitive" constellation of predictor items constructed "based on contextual and empirical research about women's crime and young offenders' experiences that account for both quantitative and qualitative differences" (Hannah-Moffat and Shaw, 2001: 57).

5.3.2 THE TECHNOLOGICAL MEDIATION OF GENDER

Andrews and his colleagues have maintained the position that the adult and youth versions of their instruments are "gender neutral" as well as being neutral in relation to race and ethnicity (Andrews et al., 2001: 191-196; Andrews and Bonta, 2003: 4-13). There are no items in the YLS/CMI-AA that directly score gender, race, ethnicity, socioeconomic position, disability, or sexuality.[16] In both the parent instrument and the adaptation for NSW, these collective experiences and relations are treated as responsivity factors that introduce additional interventions exceeding those required according to the risk profile's mapping of criminogenic need.

In this section I consider the way in which meta-analysts have responded to these challenges about gender differences. To do this I begin by considering a research paper published by Reisig et al. (2006) that troubled and intensified "debate" about gender and actuarial risk assessment. This paper triggered counter-research by the Ottawa School that attempted to demonstrate that instruments such as the YLS/CMI are gender neutral in the face of contrary localised data.

Reisig et al. predicated their research on the stance that mainstream criminological theories such as Andrews and Bonta's psychology of criminal conduct are androcentric, foregrounding contextual factors unique to female criminality. They used Daly's (1992, 1994) pathways

framework to consider the variegated ways in which women become involved in criminality to "assess the relative utility of the LSI-R" in predicting female criminality (Reisig et al., 2006: 390).[17] They conducted 402 qualitative interviews with women beginning community supervision in the State of Oregon to gain insights into their pathways into crime, while also administering the LSI-R carefully following the guidelines for its administration. Over the next 12 months, 248 women were reinterviewed, and recidivism was tracked over that period. The researchers found that the LSI-R was a poor predictor of recidivism, but that it was a valid predictor for recidivism amongst an economically motivated pathways sub-group of their sample. Their data analysis demonstrated that the instrument misclassifies a significant portion of socially and economically marginalized women that come from gender specific offending pathways.

Two years later Smith et al. (2009), allied with the Ottawa School, published the results of a meta-analysis, audaciously titled "Can 14,737 women be wrong?".[18] This research figured in an issue of *Criminology and Public Policy* characterised as being part of "the great debate over using the LSI-R with women offenders" (Morash, 2009; Hannah-Moffat, 2009; Taylor and Blanchet, 2009). As Reisig et al.'s research was the only empirical gendered pathways model within the field at that time, Smith et al. were unable to validate its findings. Rather, it was included amongst 25 other studies to calculate the average effect size of those studies that had tested the predictive accuracy of the LSI-R in relation to gender.[19] Smith et al. (2009: 192) found a medium effect size (r = .35 fixed effects, .34 random effects), where there was significant variation in effect sizes across the studies. Their analysis found that shorter follow-up periods and unpublished data were related to low effect sizes. They concluded that the LSI-R performs "virtually the same" for women and men. Even though the empirical evidence for the gendered pathways "undermined confidence in the LSI-R", they concluded that "it is inadvisable to reject" its continued use for both genders, citing the sheer volume of women included in their meta-analysis compared to the far smaller number of women included in Reisig et al.'s study.

5.3.3 EVALUATING ACTUARIAL NEUTRALITY IN NSW

When adapting the YLS/CMI for use in NSW, Thompson initially did not interrogate whether the instrument was gender neutral or valid for predicting recidivism with Indigenous young peoples (see section 3.3 of this thesis for details about his research). He relied on Jung and Rawana's (1999: 84) finding that the parent instrument was a "robust" predictor of risk (DJJ, 2002a: 6-7). Jung tested for the statistical significance of the effect size using scores across the eight risk domains and the total score, comparing estimates of recidivism for Natives/non-Natives and males/females on probation or who were in youth detention in Ontario in Canada.[20] First Nations young offenders scored higher on the overall risk score; however, no statistically significant difference was found between the two groups (Jung and Rawana, 1999: 80-81). At

the same time, First Nations young people had statistically significant higher scores in relation to peer relations, substance abuse and leisure/recreation. Comparing females and males, total risk scores were found not to be statistically significant, nor were they significantly correlated with recidivism (1999: 82). They also reported no significant differences between any of the risk domains.

In 2012 Thompson and McGrath published data demonstrating that there were gendered and ethno-racial differences evident amongst a sample of 3,568 young people on community orders in NSW who were tracked for 12 months to estimate predictive accuracy. In their review of the literature, they considered that the psychometric properties of instruments used with young offenders "may or may not be similar across some of the distinguishable subgroups" (2012: 347). They considered this the case, despite two prior meta-analyses that had concluded that there were no significant differences in relation to gender or Aboriginality (Schwalbe, 2008; Olver et al., 2009).[21] In Thompson and McGrath's analysis, differences were found in relation to gender and ethno-racial comparisons at the item level,[22] across the eight domains of the instrument, and on the total domain score.

At the risk domain level, four of the domains differed significantly for the scores of males and females, although the effect size was small.[23] Indigenous young people were found to have significant higher scores on prior and current offences, family and living circumstances, education/employment, leisure/recreation, and attitudes and beliefs compared to the other two ethno-racial categories. When sub-group differences were tested in relation to the total score, significant differences were again found in relation to gender and ethno-racial category, the effect size being very small for gender and small to medium in relation to ethno-racial difference, being the greatest for Indigenous young people. When predictive accuracy was estimated, no significant difference was found in relation to gender or ethno-racial difference, although the effect size for Indigenous status was very close to being significant. Taken together, the predictive accuracy of the instrument for the entire sample was $r = .26$, a medium-size effect. Finally, the researchers found gendered and ethno-racial differences in the offending rates for classifications according to low-, medium- and high-risk. This indicated that classifications in all of these categories over-estimate recidivism in young women, as well as over-estimating recidivism for low- and medium-risk for "ethnic" young offenders (2012: 350).[24] An analysis of ROC by gender and ethno-racial difference indicated that the classification system used in the YLS/CMI-AA over-estimated recidivism for Indigenous and white young offenders, having a 41% false positive rate for Indigenous young people and 30% for white young people.

In 2011 Hoge and Andrews published a revised version of the YLS/CMI which re-normed the cut-off scores of the previous instrument using a normative sample of 12,798 young offenders in

seven states in the US, aged 12 to 18 years (2011: 3, 33-50). The previous version had established four cut-points based on the instrument's calculation of the total score.[25] There were no adjustments made according to gender or placement in either the community or detention. The developers recommended that users adopt the new revised norms to establish different cut-points for custodial males, custodial females, community males and community females (2011: 67-70; see Figure 5.2). Hoge and Andrews continued to insist that the YLS/CMI-2.0 is neutral in relation to gender, ethnicity, race, and age.[26] In their rationalisation, the instrument is "gender responsive" as it has gender informed risk items, it considers gender in relation to the assessment of other needs and affords special considerations in relation to the family and in relation to the young person's responsivity. Hoge and Andrews avoid consideration of race or ethnicity other than listing it as a responsivity factor that is limited to the individual's adaptation to the dominant culture. No consideration is afforded to family and kin and Indigenous people's variegated communal life within the context of settler colonialism. If this was done, case planning in relation to "responsivity issues" would become oriented towards a sense of culture concerned with the revitalisation of First Nations cultural traditions and customs to facilitate young people's reintegration into community (Martel et al., 2011: 241; Shepherd and Anthony, 2018: 215-217).

We would need to look beyond the instrument to consider needs as being culturally specific for First Nations young people or to consider culture-specific risk factors such as the lack of Indigenous spiritual and cultural activities in the community and concomitant loss of socio-cultural confidence or the need for group membership (see Martel et al., 2011; Shepherd and Anthony, 2018). In the YLS/CMI's existing mode of operation, risks associated with a marginal or excluded social positioning reconfigure – via the concept of culture – into a dynamic factor founded on the demand for self-improvement where the conditions of this regulation of the self are ambivalent at best (Martel et al., 2011: 241). Further, given the elevated scores in relation to "anti-social attitudes", the First Nations young person's "mind" is put-to-the-test to determine the level of resistance to an enforced program of self-improvement and elevated controls. This regime of operation "constitutes a form of structured racialization (as) it is entrenched within assessment tools themselves" as a mode of technical individualisation that is overwhelmingly debilitating for First Nations young people and that is networked across the dominant institutions of criminal justice, child protection, out-of-home care, education, mental health, vocational training, and employment (Martel et al., 2011: 240).

In 2014, Juvenile Justice NSW adopted some of the changes made to the parent instrument by Hoge and Andrews in the light of Thompson and McGrath's research. Despite their own findings about gender and racial differences at both the item and risk domains level, Thompson and McGrath asserted that the YLS/CMI-AA could be "used fairly with a common set of classification

norms" arguing that "contextualised and idiographic considerations" are best addressed in part of the instrument concerned with the assessment of other needs and special considerations (2012: 352).[27] Hoge and Andrew's changes to Part III of the parent instrument about the assessment of other needs and considerations and Part IV in relation to determining the final risk/need level and professional override were incorporated into the administration of the instrument. Part II retained the risk profile developed by Thompson while updating the cut-points, using a new four-tiered scoring system (low, medium, medium high and high) (NSW Police and Justice, 2014: 1, 4). These recalibrated risk levels widened the orbit of actuarial risk management for young people exposing more young people to categorical suspicion as persistent offenders. The differences found by Thompson and McGrath, which were the most significant in relation to Indigenous young people, were ignored. There were no adaptations made to adjust cut-points according to gender, ethno-racial or any other structural norms, nor were the norms adjusted to distinguish between correctional settings.

5.4 THE LIMITS TO THE ONGOING CONCRETISATION OF THE YLS/CMI

For Simondon (2017: 135) the concretisation of a technical object at a new threshold of functioning is a regulatory operation that occurs as an "inter-individual coupling between man and machine when the same self-regulating functions are better and more subtly accomplished by the man-machine couple than by man or machine alone". This transindividual relation is presented as occurring on the same level as a technical object's schema of functioning involving:

> The intuition of the schemas of functioning; as a being who participates in its regulation, man can be coupled with the machine as an equal, and not merely as a being who directs or utilises it through the incorporation of ensembles, or as a being who serves it by supplying matter and elements. (2017: 135)

The technical mentality and mode of technical activity that Simondon envisages is directed towards more intelligently or reflexively considering the restructuring of internal elements and relational structure of the technical object as well as whole of the technical milieu and its sources of conflict to anticipate or invent a resolution to a technical problem at a critical threshold of functioning. Humans are cast as mediators who "interpret a given functioning in terms of information, and in order to convert it into the forms for another machine" (2017: 150). Transduction discovers an emergent signification that modifies elements in an already concretised technical object, to restructure its regime of functioning (see 2017: 147-153; 2012: 1-5). A technical object can be understood as being open insofar as the localisation of its margin of indeterminacy at a critical stage or point leaves it open to information coming from the outside that establishes the conditions of possibility for further critical phases of functioning

(2017: 154). It retains the capacity for variation in its functioning by selectively receiving information amidst "the influx of variation with respect to a form" (2017: 150).

The meta-analyst has taken charge of the conflicting relations between a heterogeneity of actuarial prediction instruments as they have been actualised in an ensemble of localised jurisdictions. They enact a transductive operation using a technique of normalisation to evaluate predictive efficacy on a single-minded value concerned with determining whether these instruments reach a utilitarian threshold of predictive utility. While the meta-analyst lives in a relation with, or coupled with several technical objects, they are situated above these prediction instruments to make more authoritative claims about the effectiveness of their overall regime of functioning and psychometric properties. Their analyses are constrained by the operative structure of these instruments that have been concretised by their developers. Critical concerns linked to race, gender and so on are viewed as confounding variables by meta-analysts who selectively operationalise these outside informational forces using a mode of statistical control.

While these analyses may localise the margin of indeterminacy in terms of the overall operations of these instruments or within the context of the differential relations of gender or other structural considerations, meta-analytic operations establish a standardising coding system that is operationalised in the algorithm to estimate predictive accuracy at the expense of incorporating novel observational data. This operation superimposes itself on prior content, for a partial convertibility of all local evaluative data captured by the analysis to generate an estimate of predictive utility within a bandwidth of acceptability that is pre-occupied with the detection of high-risk offenders. The technique may be able to generate new thresholds of determinate information that could be utilised to restructure the operations of prediction instruments; however, this requires the mobilisation of efforts by a network of other actors who share a commitment to evidence-based practice that would enable actuarial instruments to evolve. Unfortunately, the cognitive schema of the meta-analyst is technocratic, founded far too exclusively on a "quest for form and efficiency of form in the transmission of information" (2017: 147).

What is remarkable about actuarial regimes in youth justice is that, despite roughly a decade of operation, very little was known about the efficacy of the YLS/CMI. Meta-analyses about predictive accuracy have not been able to demonstrate any significant improvement in thresholds of predictive accuracy. On the broadest measure of predictive error, the utility of the YLS/CMI remains around AUC = .68. This can be considered as being an upper limit in the conditions of utility given the tensions in its own operations conceived as "incompatibilities that arise in the progressive saturation of the system of sub-ensembles" (2017: 32). As we have seen, these tensions arise in relation to the "moderators" that impact on calculations of effect size

that extend to a questioning of the modes of anticipatory pattern analysis used to select predictor items for inclusion in the instrument, the criteria for measuring recidivism, the aleatory characteristics of the offender population, and questions of difference associated with gender, ethnicity, race, culture, developmental status, disability and so on.

In the case of tensions arising in relation to difference, meta-analytic techniques have resulted in no changes in response to tensions associated with the estimation of recidivism, or quite minor modifications in the YLS/CMI associated with the "responsivity" of young people. The Ottawans have refused to modify the instrument's risk items, and modifications have been only made by recalibrating the norms used to establish the risk classification cut-points, and to install additional non-quantifiable "responsivity" factors into the instrument's regime of risk neutralisation, effectively overburdening the targets of intervention. These adjustments do not introduce new thresholds of self-regulation in the way described above. For such a concretisation to occur, there would need to be a modification of functions that is an "essential, discontinuous improvement" where modifications crossed a technical threshold, occurring as a phase-shift or mutation (2017: 43). Rather, the minor modifications that have been mapped in this chapter sustain the continuity of the YLS/CMI and its regime of functioning without modifying its sub-ensembles and their distribution to "diminish the nocuous consequences of residual antagonisms" (2017: 42). Simondon (2017: 43) makes the sardonic comment: "The path of minor improvements is one of detours […] they hardly make the technical object evolve".

The meta-analytic techniques described here do not function as an open-ended network that opens the possibilities for self-adaptation and self-regulation at new thresholds of networked and synergetic functioning. The techniques themselves deploy elaborate statistical equations derived from probability models as a defence against the indeterminacy of prediction itself. These controls ward off contingency, disparate information and tensions that are inseparable from both the construction of the instrument and its validation. Therefore, the potential meeting between the actuarial technical object and its milieu is fended off rather than allowed to enter an effective multifunctional relation that adds value and new synergies to the technical ensemble. Meta-analysts embody a technocratic mode of autocratic thought that expresses "a will to acquire power that comes to light in a group of men possessing (technical) knowledge" (2017: 142). Simondon accuses the technocrat as being a mathematician who thinks and organises in terms of sets, where attention is more focused on overseeing the technical object as an enterprise. Given that these meta-analyses emerged at the time that actuarial regimes were increasingly being operationalised in youth justice milieus, this technocratic mentality corresponds with an "unbridled will to conquer",[28] to perpetuate the enterprise as it aspires to succeed and realise its hegemony in the criminal justice milieu at a global scale.[29]

One of the forces propelling this resistance to mediating outside pressures for a reconfiguration of the YLS/CMI's risk items and their nesting within the eight risk domains is the developers' deep commitment to legitimating their essentialist explanation of crime, the "social psychology of criminal conduct". At the heart of this universal explanation is the antisocial individual who is understood to display observable variations in criminal propensity.[30] Andrews and Bonta have articulated a hostility to "mainstream sociological criminology" (1988/2002: v). In their preface to the second edition of their textbook, they berate these alternative explanations and orientations as being out-of-tune with the nature of criminal conduct, in denial about individual differences in this conduct, hostile to intervention as this was considered as being criminogenic if not morally deficient, and generally hostile to the criminal justice system and its modalities of punishment (2002: v-vi). They commented: "The problem for us […] was that the actual research findings regarding variations in criminal activity and its processing contrasted dramatically with what mainstream criminology was teaching". From this stance, they have consistently contested "antipsychological" truth claims, using research that is located within their valorised ontological paradigm to debase or undermine alterative accounts, while largely ignoring the research that might support alternative claims (Hoge and Andrews, 2003: 18-26). Still in the first decade of the 2000s mainstream criminology remained an enemy and threat to the authors' ambitions.[31]

5.4.1 TECHNICAL ETHICS

For close to 40 years the elementary form and content of the YLS/CMI has remained the same. It functions as a supersaturated technical system with its organised homeostatic structure.[32] Challenges to its composition surface in a sensorial way as "a problematic of orientation according to an axis that is already given" (Simondon, 2017: 286). The instrument is called into question within a milieu that is anterior to the consistency of the instrument, introducing differential energy and informatic matter along one or more perceptual orientations. In an ethical sense, these differential polarities that segregate perceptive units are the "informational potential of the situation", which could be accommodated to by increasing the quantity of signals, or by selectively privileging interesting signals (2017: 269; 394 *fn*6).

The Ottawans have strived to maintain the perceptual organisation of the YLS/CMI, largely defending the instrument's structure, halting its ongoing technical individualisation.[33] If (for now we accept the value of the actuarial enterprise) a vital dynamism is required that allows the developers of an instrument to couple themselves with forces in the milieu to learn from the informational potential of the situation. This is what Simondon refers to as vital (re-)orientation where information takes on "an intensive, predominant meaning at the level of various gradients" in its gestation (2020: 268, 271). Perception effectuates by qualifying, transposing, and modifying differentials. It mediates between the quality and quantity of informatic signals

to produce a finite number of solutions. Perception is literally the passage that transforms the tension that affects a supersaturated system (2020: 270). This metastability/individualisation equally applies to the genesis of concepts. The formation of concepts arises from the middle of a concrete situation as a function of all the concepts present in the logical field. It is a product of the inter-perceptive tension in the meaning of the relation between the subject and the world and its potentials (Simondon, 2017: 271). The mediation between an *a priori* and an *a posteriori* base for knowledge is not possible; if it begins from either basis, the formation of concepts is over-determined. It is the entry of new concepts into the logical field that can effectuate a restructuration in the set of concepts, modifying the threshold of distinction of all concepts.

While a more exhaustive evaluation of "moderator" variables might help in discerning the key elements of tension in prediction given the structuring forces of gender, ethnicity, race, developmental status, and disability, it seems that meta-analytic techniques have limited value in drawing out new potentials. This is a function of the overwhelming numbers of individual studies assembled that work within the Ottawan paradigm rather than challenge it as did Reisig et al.'s research into gendered pathways and recidivism. Meta-analyses primarily function as a boundary maintenance mechanism, limiting innovation within youth justice regimes that concentrate on actuarial risk management. Nonetheless, these differences remain as sources of tension that signal polarising perceptual gradients of unrealised potential.[34] The existence of other polarities (attractors and tendencies) offer alternate unrealised or partially realised attractors and tendencies remain as vital forces within youth justice milieus that call for an ethical response.

It can be argued that the most productive and ethical way forward in relation to the challenges of difference is to return to open-ended anticipatory pattern analysis that draws new potentials from a far wider dataset, using a mode of learning from the emergent data that explores a range of competing risk domains and concerns. This would necessitate inventing new items and domains for consideration which might invert the logic of instruments such as the YLS/CMI. The research conducted by Reisig et al. (2006) described earlier is exemplary of this approach. In the case of First Nations young people, this research would need to be conducted either by First Nations people or in a genuine partnership with them. Technical individualisation can only progress where some of the elements or parts are detached from the whole. This enables any new arrangement of elements the freedom and capacity to grow within a multitude of values of rapport between the individualisation of the parts and the degree of individualisation of the whole (Simondon, 2020: 205). It is necessary to sustain a polarity to disrupt the homeostatic equilibrium of a regime of individualisation. By establishing an asymmetrical qualification, or a new gradient of orientation, a pathway is prepared for the budding of a new line of technical individualisation (2020: 223). The conditions of possibility "reside in the existence of potentials

that allow matter to be polarised, whether living or not; every field makes polarities appear in initially non-oriented milieus" (2020: 223).

By establishing a new line of pattern analysis that is both qualified and quantified by a novel gradient of polarity, a more vital technical individualisation is made possible. By considering the asymmetrical realities of cultural/collective experience, new rapports and values can be propagated in the youth justice milieu. This open-ended individualisation is dependent upon a biopolitical economy that favours the acceleration of the growth of the parts for ongoing technical individuation rather than the current economy of inhibition that largely renders these tensions and challenges as undifferentiated matter or subject to dedifferentiating actuarial forces.

5.5 CONCLUSION

In this chapter I have tried to avoid launching a critique of the actuarial enterprise by relying upon a representational politics. Instead, I have mapped the ongoing technical relations between actuarial instruments and their associated milieu by interrogating the regulatory effects of meta-analyses of predictive accuracy. Instruments such as the YLS/CMI are located within a far more extensive network of informatic regulation, where the meta-analysis functions as a transducer within that network contributing to the instrument's relative autonomy of being. Estimates of predictive accuracy deploy a mentality of technical utilitarianism that values cost-effectiveness and maximising the detection of high-risk offenders above other informational gradients and lines of action that might generate different insights. My analysis indicates that the ongoing technical process has a tendency towards homeostasis as it has inherited a past conditioning that has built-in constraints because of standardised parameters that the developers have concretised into the YLS/CMI and that "limit the degree of novelty of each retaking effect of the invention" (Massumi, 2012: 30). This same constraint is reproduced in meta-analytic research that attempts to mediate differentials such as gender, race, ethnicity, socioeconomic inequality, traumatic experiences, age, and disability because there is a lack of alternate experimental data to challenge the volume of research data that uses the built-in constraints of the YLS/CMI. The meta-analysis takes these correlations to the brink of a threshold of metastability and then falls short of innovating. It is repeatedly rationalised that the threshold of predictive error is good enough, that despite data to the contrary there is no need to modify the YLS/CMI other than make some minor modifications. Many problems in the youth justice milieu remain unresolved given this self-limiting technocratic research and its homeostatic feedback loops. To date the technical individualisation of the YLS/CMI is arrested, as it saturates and overdetermines the justice milieu in NSW limiting other lines of becoming.

CHAPTER SIX: THE BIOPOLITICS OF DIVERSION

6.1 INTRODUCTION

This chapter demonstrates how actuarial research about the effectiveness of youth justice interventions reinforces the agency of actuarial risk case management as the primary way of combatting recidivism and legitimates its propagation into new domains of operation. I concentrate on research conducted by the NSW Bureau of Crime Statistics and Research (the "Bureau") in the period between the late 1990s up until 2013. Over the first decade of the 2000s the Bureau intensified its research into youth recidivism, aligning its strategic direction with the state's first State Plan that prioritised reducing its recidivism levels by 10% by 2016 (NSW Government, 2006: 29). Evaluative research about the effectiveness of any offender program in reducing re-offending establishes an authoritative knowledge/power relation that has the capacity to legitimate or disqualify these programs given the determinative parameters of the probability models deployed in the research and the univocal concern with recidivism as the valued outcome criteria. What is interesting in this statistical-human archive and its biopolitical relations is the extent to which the Bureau's researchers became a strident political stakeholder in a campaign of reform in youth diversion. This affective relation emerged from a heightened visibility about high rates of youth recidivism that conflicted with conventional wisdom about the nature of youth offending and rationales of youth diversion.

The chapter begins by describing some of the Bureau's research that indicated that the rate of recidivism for young people sentenced in the Children's Court was as high as 70%, casting doubt on the belief that most young people grow out of crime. Within a short period of time the researchers began proposing a "triaging" scheme in youth justice to risk screen offenders early in their criminal career and refer them for a more comprehensive risk assessment using the YLS/CMI-AA to take preventive action. The concept of triaging is examined in terms of its precautionary logics. A critical analysis of the Bureau's political campaign to reform youth diversion and discredit the "dogmas" that have limited the effectiveness of youth justice in combating recidivism. Is undertaken. The final section describes the introduction of the Youth on Track program in youth diversion that remains the flagship model for NSW's preventive and early intervention efforts to address youth crime. I demonstrate how this program treats young people in the early stages of entry into the diversionary end of the system as if they were persistent offenders.

6.2 MODULATING RISK INTEVENTIONS BY AUDITING THEIR CAPACITY TO REDUCE YOUTH RECIDIVISM

Auditing the effectiveness of youth justice interventions establishes a relational line of informational feedback that has the power to endorse the legitimacy of effective offender management programs, lend support for "promising" ones, or contest these programs in instances where there is consistent evidence of their "failure" in reducing recidivism. Evaluative research into offender programs establishes both resonating and conflictual relations across the operating domains of the youth justice milieu driven by the imperative to lower the rate of re-offending. Outcome data about the rise or fall in the rate of re-offending is a potential control point, an enunciative referential that establishes the limits and possibilities of future action in the security milieu. In NSW a key institutional site that assumes a primary responsibility for this enunciative function is the Bureau of Crime Statistics and Research (BOCSAR), a networked apparatus in the state's Department of Communities and Justice where Youth Justice is also located.[1]

6.2.1 BOCSAR'S ACTUARIAL TECHNICAL OPERATIONS

Prior to the early 2000s, the Bureau had only conducted one study that investigated the rate of re-offending for young people sentenced in the Children's Court (Coumarelos, 1994). In 2001 the Bureau established a relational data infrastructure – the Research Offender Database (ROD) – to begin scrutinising the state's level of recidivism more closely, the factors associated with recidivism, and the relative effectiveness of the state's interventions in reducing the rate of re-offending. This strategic direction was in alignment with the state's investment in using the YLS/CMI-AA in youth justice and the LSI-R in adult corrections and its escalating mobilisation against re-offending. ROD has the capabilities to capture data from the courts about recorded convictions and from police interventions taken against Persons of Interest, as well as examine offence and other biographical data captured from adult corrections and from youth justice. The database establishes a mode of data capture that concentrates on measuring the frequency of re-offending for cohorts of offenders over time to measure the impact of criminal justice interventions on offending behaviour and to assist in offender program development (Hua and Fitzgerald, 2006: 1).

Since the establishment of the ROD, a multiplier effect has occurred where the BOCSAR has escalated its actuarially driven research. Up until to the end of 2020S there have been 69 research bulletins about recidivism in NSW. Of these, 20 were focused on youth offending.[2] Roughly 45% of these were concerned with the effectiveness of youth justice interventions, while the remainder were equally focused on either profiling youth recidivism or the

development of actuarial instruments for estimating recidivism and screening for risk. This sustained research agenda was given impetus with the establishment of the NSW Government's State Plan to reduce levels of recidivism in that state, a priority that was initially established in 2006 (NSW Government, 2006: 29-31). The plan set a target to reduce the proportion of offenders who re-offend within 24 months of being convicted by a court or having been dealt with at a conference by 10% by 2016. The Bureau assumed the key role in measuring progress in meeting this target. This ongoing auditing retains a focus on profiling high-risk or persistent offenders, understood to be "a small proportion of people […] (who are) responsible for a large proportion of criminal activity".[3] In pursuing this line of research the Bureau participated in criminal career research protocols that had been crystallised in the US during the 1970s and 1980s as a probabilistic episteme for modelling an individual's participation in crime using aggregate risk data over the course of a "criminal career". This episteme was then focused on identifying individual differences in participation rates in criminal offending and predicting levels of risk amongst offender populations to target high-risk offenders for incapacitation (Blumstein et al, 1978; Blumstein et al., 1986). In the minds of the Bureau's researchers, it was necessary to profile recidivism in the offender population by developing estimation models that identified the "best" predictors of recidivism to assist in developing strategies for reducing crime (Hua and Fitzgerald, 2006: 1).

6.2.2 THE ANTERIOR BIOPOLITICAL MILIEU

The *Young Offender Act, 1997* (*YOA*) understands diversion as those mechanisms that turn young people away from formal sanctioning in the court system. This channelling of most young offenders is a form of biopower, although it has not been described as such in the literature. The *YOA* uses police warnings, formal cautioning, and youth justice conferences (YJCs) to lower the aggregate rate of young offenders who end up in the "back-end" of the youth justice system on community orders or youth detention under the statistical assumption that this will ultimately lower the overall rate of re-offending in the youth offender population. Legally, the young person is considered as an integrable and developing member of the population as a whole and is afforded a form of sanctioning that is proportionate to the offence and their "best interests" as well as the well-being of the community, including the victims of crime. On this register biopolitics seeks to "foster life" for young offenders founded upon the probabilistic assumption that most young people grow out of crime, the supposition that the youth justice system generates criminogenic effects, and the assumption that the least intrusive intervention ameliorates the stigmatising effects of criminal sanctioning. At the same time, the routine reporting of different rates Indigenous/non-Indigenous sanctioning in diversion that

demonstrate endemic effects over time makes visible the racialised dimensions of diversionary biopolitics and its more debilitating massified effects (see Goldson et al., 2021: 100-128).

The Bureau's early research lent support to the statistical proposition that most young people grow out of crime. Coumarelos (1994) conducted the Bureau's first investigation into youth recidivism. Her objective was to profile recidivism amongst young offenders sentenced in the Children's Court to estimate the most cost-effective point at which to intervene to prevent further offending. The project emulates Wolfgang et al.'s (1972) birth cohort study that had the same objective. They developed a probability model to estimate recidivism founded on a matrix of transitional probabilities as participation in crime accelerated. Their modelling indicated that a typical offender was most likely to commit a truancy or minor offence (0.47 probability) and is most likely to desist (0.35); if a second offence is committed the probability of the third is 0.6509, and beyond the third, the probability of re-offending ranges from 0.70 to 0.80 (1972: 163). On that basis they recommended a three strikes policy claiming that the most optimal point of intervening was at the time of the third offence.[4] This modelling assumes that it as this threshold that it is necessary to arrest the development of persistent offending.[5]

Coumarelos tracked a cohort of offenders convicted in the Children's Court up until the age of 18 years, finding that 69.9% of these young people did not return to the Children's Court, 15% had two re-appearances, and 8.7% had three or more re-appearances. In her modelling the risk of re-offending increased as the number of appearances increased, at first rapidly and then more gradually (1994: 12-21). Lacking sufficient statistical grounds for her recommendation, she claimed it was more cost-effective to target persistent offenders rather than first time offenders.[6] Cain (1996) conducted a similar kind of study for Juvenile Justice, using a more rigorous method of probability modelling. His data also found that most offenders did not re-offend (70%). His modelling indicated that the type of penalty initially handed down to a first-time offender was the best predictor of recidivism, independent of gender, age, type of offence, residence, or type of court (1996: 35). He argued that his findings supported a "policy of bifurcation" that diverts the more prevalent but less serious offender away from the court coupled with harsher penalties for the more serious and persistent offender (1996: 60).[7] Given that young people whose first court appearance was under the age of 15 years had a 50% chance of re-offending, he recommended that they be diverted.

In 2002 Luke and Lind published the results of research comparing recidivism levels for young people who were diverted to a Youth Justice Conference and those sentenced in the Children's Court. They restricted their sample to first-time offenders finding that the conference group had the lowest rate of reoffending to the court groups, although this was not statistically significant (2002: 30).[8] The conference group remained offence-free for longer compared with the court

groups and this difference improved over time (2002: 5). They concluded that conferencing results in a moderate reduction of between 15-20% across different offence types regardless of gender, criminal history, age, or Aboriginality (2020: 13). These findings were situated within an extensive networked evaluation of the implementation of the *YOA, 1994* that had found that the legislation had been successfully diverting young people away from the courts (NSW Attorney General's Department, 2002; Chan, 2005).

6.3 SHIFTING STATISTICAL TRUTHS

In 2005, the Bureau published the first in a series of research papers about youth recidivism that challenged earlier research findings that roughly 70% of young offenders do not re-offend. Chen et al. (2005) used a longitudinal cross-sectional design tracking the rate of re-offending over an eight-year period from the time of the first appearance in the Children's Court.[9] This was the first study in NSW to track a cohort of young offenders across the legal threshold where a young offender continued their "career" into the adult criminal justice system.[10] The researchers developed a probability model of recidivism to identify "who is at risk of making the transition from juvenile to adult offending" (2005: 2). The data completely reversed the earlier findings about the overall rate of recidivism finding that 68% of the sample re-offended at least once in a juvenile or adult court, 57% of these re-appearing in adult courts (where 23% of these offenders were imprisoned).

To profile which young offenders were most likely to continue re-offending in adulthood the researchers selected gender, Indigenous status, age at the time of the index offence and the principal offence at first appearance to correlate each variable with re-appearances in the Children's Court and the adult courts. The initial analysis found that each variable had a statistically significant relationship with recidivism; however, a multiple regression analysis found that being male and coming from an Indigenous background were the only variables that demonstrated an independent effect on re-offending (2005: 4). These "predictors" are proxies of recidivism that are very difficult to distinguish from the criminalisation processes that contribute to the over-representation of First Nations people in the criminal justice system. The modelling brackets out these structural relations conflating race as being an individual risk factor. By treating Indigeneity as an aleatory individual factor or criminal propensity it becomes de-racialised and politically neutralised in the biopolitical economy of risk prediction.[11] A series of further probability models were examined to profile recidivism in the Children's Court and the adult court as well as to identify the risk factors that result in imprisonment The initial profile was reconfirmed irrespective of the outcome measure used. However, in the case of reconviction in the adult courts Indigenous males and females were nine times more likely to appear there (2005: 8). If an Indigenous male appeared once in the Children's Court there was

a 16% risk of being imprisoned by an adult court; if there were three or more appearances, there was a 57% chance of the risk of imprisonment (2005: 6-7).

Over time the Bureau conducted a series of studies that audited young people on non-custodial orders, police cautions and YJC's, repeatedly finding higher than expected rates of recidivism. Vignaendra and Fitzgerald (2006) found that 42% of young people who were cautioned re-offended and that 58% of those who attended YJC's re-offended. Their data challenged Luke and Lind's (2002) evaluation of youth diversion in relation to YJCs where recidivism levels were found to be 20% higher than what was demonstrated by that research.[12] Smith and Jones (2008a) presented data captured from all young people convicted in the Children's Court or who completed a YJC outcome plan in 2002 that indicated 59.0% of this cohort reoffending in 2002 and 59.3% in 2004.[13]

This heightened visibility about recidivism in youth diversion triggered what can be understood as a "psychical tension" or the first expression of a "degree of metastability" (Simondon, 2020: 260) that began to be experienced amongst this group of researchers. Their data on recidivism had begun to designate a reality that conflicted with prior data and conceptions about the operations of youth justice. For example, in the following statement made by the researchers who conducted the initial longitudinal tracking of young people across the youth and adult justice systems, there is a germinal polarisation of relations evident as they stipulate that their research findings needed to be considered in how young people are sentenced:

> […] one important policy implication of the current findings is that efforts to reduce the risk of reoffending should not be delayed in the belief that most young people making their first appearance in the Children's Court will never reappear in court again. This is particularly true where the defendant is Indigenous, male and/or relatively young. (Chen et al., 2005: 10)

What they were taking issue with was the widespread belief that most young people who appear in the Children's Court don't reappear, a statistical understanding that "underpinned a long-standing policy of trying to minimise the intensity of criminal justice intervention among juvenile offenders in New South Wales" (2005: 1). For Simondon (2020: 258-261) a state of metastability such as this is analogous with a state of conflict that calls into question prior individuated structures and the subject's relations with the milieu in which they live. The researchers' statements are indicative of a perceptual problematic involving the tension between two ways of viewing the world and how to resolve this conflict (Simondon, 2020: 259-261). This piece of research was the first substantive research conducted by the Bureau about youth recidivism since it had established in offender database, and yet the researchers immediately oriented to an actuarial solution foreclosing any active mediation of these disparate realities. They insisted

that it was necessary to identify which young offenders are "at most risk of reoffending" to deliver cost-effective interventions that have proven that they can reduce re-offending (2005: 10-11). Moreover, they argued that there was "a pressing need for further research" that advanced the understanding of the risk factors associated with re-offending. This research bulletin, like many of the others that flowed from this research agenda, was infused with a will-to-power aimed at mobilising the research findings to assume a leadership role in a state biopolitics aimed at restructuring of youth justice policy and practice. The individualising line of action taken by the Bureau established an intensive and polarising relation with the Youth Justice milieu fuelled by a growing sense of the shortcomings of the operations of youth diversion and the growing suspicion that too many young people are not receiving adequate levels of intensive intervention.[14]

6.4 RESOLVING THE GERMINAL TENSION

Over the next six years the Bureau's researchers undertook a series of research projects that coalesced around developing probability models about the risk of re-offending amongst young people who had only committed one or two offences. They proposed that these models could be used as risk screening instruments, conceived as a "triaging" mechanism for referring those assessed as being at elevated risks of re-offending to "early intervention" programs to reduce their likelihood of becoming entrenched in the criminal justice system. I understand this as a line of technical individualisation; However, it is not based on the transductive logic used by Simondon (2020: 7-11) to describe a metastable system in a state of tension where an operation of individuation attempts to discover a dimension according to which these disparate reals can become part of a system that resolves their incompatibility. Rather, the Bureau's technical activity attempted to impose an actuarial solution from above using the determinate logic of the YLS/CMI-AA to restructure the relations and practices operating in youth justice.

6.4.1 RISK SCREENING

In 2007 the Bureau published the results of a feasibility study that attempted to profile the risks that might be associated with re-offending that are identifiable at the time a young person commits their first offence. The research aim was to develop an actuarial risk screening device that could be used to target young people at elevated risk of re-offending to prevent this from occurring (Weatherburn et al., 2007: 2). The researchers described this as a "triaging" scheme that uses "a few objective and readily obtained indicators of risk, so that the higher risk categories can be referred for a more thorough assessment" using the YLS/CMI-AA (2007: 2). In the actuarial anticipatory mind-set, there is a presumption that first-time offenders are a mix or

young people who will desist from crime and those who will persist in re-offending much longer into the future who can only be identified by a more exhaustive anticipatory assessment of risk.

The researchers' ambition was to have a risk screening device installed at the time when police issue a warning or caution or refer a young offender to a YJC and when a young offender is brought to court to facilitate "an assessment for early intervention" (Weatherburn et al., 2007: 4). If this scheme was realised, all domains of operation in youth justice would be modulated by an actuarial risk assessment. At that time actuarial risk case management remained confined to young offenders who had been sentenced to community-based orders or youth detention. The researchers (2007: 1-2) adopted the position that the failure to intervene at the first point of contact was contributing to the entrenchment of youth offending because of a lack of preventive action. The problem that the Bureau's researchers had briefly defined two years earlier about the necessity of identifying and targeting high-risk offenders earlier in their involvement in the youth justice system had become operationalised in the probability model presented in the researchers' paper.

The researchers went to considerable lengths to capture information from other governmental apparatuses, disaggregating and recoding it to select 19 possible risk factors that might be linked with re-offending.[15] This data was captured from the case files of young people on community supervision, child protection information from the Department of Community Services (DOCS) and information from the Department of Education and Training (DET). The research was limited from the beginning as it used a small sample of young offenders on community-based orders,[16] and failed to limit the selection of risk codes to variables that occurred prior to offending. Just over 55% of their sample had a history of re-offending where 22.4% had re-offended twice and 14.03% had re-offended three or more times (2007: 7). They measured recidivism by tracking a young person's re-appearance at court over a four-year period, finding that 71% of their sample were reconvicted.

It appears that a logistic regression analysis was conducted using all 19 variables even though a number of these variables didn't meet the confidence levels specified in the analysis.[17] Four variables were identified as "significant predictors" of recidivism: being 14 years of age or younger at the time of the index offence, not being in school at the time of this offence, being suspended or expelled at the time of the offence, and prior criminal history (2007: 8). The justification for this is unclear as it is reported that only three of these risk factors demonstrated independent size-effects (see 2007: 9). The predictor variable, being 14 years or under, was selected as a prerogative of the researchers as it did not demonstrate an independent effect-size.[18] Despite relatively low levels of predictive accuracy, the developers optimistically claimed that their device could "determine which juveniles will re-offend with a fair degree of accuracy"

(2007: 9).[19] For all this effort, being out of school at the time of the offence was the only dynamic factor that could be authoritatively linked to the risk of re-offending.

In 2011 the Bureau published a second feasibility study that developed a risk screening device for use in police diversion using data that is readily available in the police database (Lind, 2011). The rationale behind the project repeated the same arguments used in the 2007 publication virtually word for word. The study overcame some of the limitations of the earlier sampling strategy by sampling all young people cautioned by police or courts in NSW in 2006 (n = 8,537), although the data capture was confined to static factors as well as still including young people who had re-offended prior to the index caution.[20] Thirty percent of those cautioned in that year had re-offended, with 2.8% having between five and 25 prior cautions, YJCs or court appearances (2011: 3). Re-offending was measured by tracking offenders for three years from the index caution in 2006 using a measure of recidivism that included cautions, YJCs and re-appearance at court.[21] Fifty-two percent of the sample re-offended at least once, 42% had at least one proven court appearance and 19% had multiple kinds of contact. The descriptive data profiled the cautioned young person as: "male, non-Indigenous, lives in a major city, is aged between 15 and 17 and lives in a socio-economically disadvantaged area" (2011: 10).

Starting with 10 potential predictor items that had significant correlations with the output measure of recidivism, each variable was added into the probability model using a stepwise procedure to determine its predictive power (Lind, 2011: 7). The final model identified four predictor items that could be used in the risk screening device, all of which are static factors: prior contacts, the jurisdiction issuing the index offence (the police or the court), Indigenous status and gender. This model profiles a high-risk offender as an Indigenous male who was cautioned by the police, and who had multiple prior contacts in the juvenile justice system, where having four or more was by far the strongest predictor (2011: 7, 8). If this device were to be implemented, it would justify implementing more intrusive risk prevention interventions with Indigenous young people who are under-represented in youth diversion. Using the construction sample Lind attempted to validate the predictive accuracy of the device using a c-statistic, a measure of the ROC curve that measures concordance of the observed and predicted values (Hosmer and Lemeshow, 2000). This measure of predictive accuracy was reported as demonstrating an "acceptable" level of predictive power (Lind, 2011: 8).[22]

The Bureau's two primitive probability models provide an abstract schema for implanting a risk screening device into police diversion. These researchers wanted a computerised or manual risk assessment and referral system in policing to facilitate a more comprehensive risk assessment and referral system for "treatment" (Lind, 2011: 10). At that stage a risk scoring system for classifying levels of risk had not been established and the researchers considered that the device

may need to incorporate risk information about contacts with welfare authorities and conduct issues at school (2011: 10).

6.4.2 THE CONCEPT OF TRIAGING AND ITS PRECAUTIONARY LOGISTICS

The concept of "triaging" was used strategically by the Bureau's researchers on several occasions to legitimate risk prediction and the precautionary targeting of potential high-risk offenders in the early stages of a young person's criminal career. It links risk screening to the benign and common-sense idea that targeting of young people with elevated levels of risk of re-offending for "early intervention" will prevent young people from becoming entrenched in the criminal justice system. The technique of risk screening and its related concept of triaging was an emergent solution to the Bureau's group of researchers' internal conflict with already arrived at solutions in the youth justice milieu. Triaging lent support for a restructuration of the operations of youth diversion if the Bureau could succeed in lobbying for this mechanism to be installed in policing.

In medicine, triaging is a mechanism for prioritising treatment "need" and assessing the likelihood that a patient will benefit from immediate medical treatment in crisis or emergency contexts. Triaging is a technique of biopower, where critical decisions need to be made in situations where there is a high influx of individuals best understood as a decomposing mass in far-from-equilibrium conditions (they are literally at risk of dying or serious illness or disability). Intervention or non-intervention is located somewhere in between the "power to foster life" or "disallow it to the point of death" (Foucault, 1978: 138). Triaging refers to those vital decisions about whether to intervene/leave people to die, pivoting "on the governmentalized management of life and death" (Pugliese, 2020: 2). As such it is "massifying" rather than "individualising" in its effects, as it is directed at a particular segment of the population who bear the collective burden of the aggregate governmental effects of these interventions (Foucault, 2003: 243).

The Bureau's use of the concept of triaging reconfigures this mechanism in a way that is intelligible within public health biopolitical regimes where incidence rates are used to identify the rate of new cases of "disease", or more ideally to estimate the fraction of the population at risk of developing disease for more effective disease control to prevent its cumulative detrimental effects at some point in the future. The transportation of this biopolitical mentality into the control of recidivism strategizes persistent or chronic recidivism as being analogous to a kind of "disease" that has a low cure rate, thus contributing to rising crime rates and social harm. By interrupting the anticipated escalation of recidivism in its earlier stages when a young person first enters the youth justice system, it is rationalised that this can promote economic

and social benefits for society by lowering the rate of reoffending and perhaps rehabilitate some young people. Within the context of youth justice diversionary policy, "prevention" is strategized as targeting and neutralising endemic and aleatory criminogenic risks that children and young people pose to community safety, the equivalent of neutralising or disabling life by excessive regulatory means, extending the state's power to intervene into their lives for elongated intervals of time that exceeds the legislative conditions of cautions or YJCs. This biopolitical power focuses on the dispersed environmental management of a "threat posed by certain populations to the reproduction of the normatively framed general good life of a society" (Berlant, 2007: 756). The targeting of young people anticipated to be persistent offenders aims at "regularising life" by promoting or "forcing life […] to endure and appear in particular ways" effectively disqualifying other modes of life (2007: 756). The temporal frame being deployed here is a futures-driven anticipatory regime located within a background milieu of endemic or more "permanent factors" that cannot be completely eradicated and that need to be neutralised by security measures (Foucault, 2003: 244). Prevention pivots in-between the strategies of the capacitation, disablement, and debilitation of a risk population to achieve particular "massifying" regulatory effects.

Triaging provides an embryonic image for future co-individuating collective thought and action across differential domains and relations in the youth justice milieu if one accepts the anticipatory logic of the Bureau's researchers. I stress that this solution does not deploy the transductive logic Simondon (2017: 252) uses to invoke the invention of new thresholds of possibility and human-technical restructuring that he associates with the transindividual relation. While the proposal requires a restructuring of elements in of policing and the regime of diversion, this is in convergence with the regime of actuarial functioning described in Chapter Four. Nonetheless, the concept of triaging conveys a sense of urgency and criticality to respond with a more precise action that targets the high-risk offender in localised zones of elevating risk. The proposal to combine risk screening and a comprehensive assessment to more effectively profile risk expresses the same abductive mechanism described in Chapter Four, interpolating this mode of thought into police diversion. It signifies a mobilisation of a collective network of diverse authorities to act in a state of preparedness in the face of ongoing contingency and uncertainty in the precarious lives of young offenders (Adams et al., 2009: 259-257). A politics of speed and precaution begins to unfold where youth diversion is targeted as an opportunistic site for combatting a potential enemy in the war on recidivism. The concept is sufficiently polyvalent in that it signifies a promise of rehabilitation and good intention founded on the depoliticised banner of preventing re-offending in its early stages even though the social relations here are adversarial and premised upon a generalised fear propelled by the anticipation of an imminent risk that is "here-and-to-come" (Massumi, 1993: 11).

The promise of "prevention" advanced by the Bureau unravels a conception of prevention founded upon social solidarity and the collective spreading of the burden of risk. The researchers deployed a conception of prevention that is far closer to the "precautionary principle". Precaution deploys a preventative logic that justifies political prudence and the steering of a course of action to avert serious or irreversible damage that is viewed as being both highly probable and scientifically uncertain.[23] The social government of prevention "presupposes science, technical control, the idea of possible understanding, and objective measurement of risks" (Ewald, 2002: 282). Models of public health or crime prevention aim to achieve security by reducing risk to a sufficient level founded upon a trust in science and its know-how, the promise of an "ever-possible control of power by knowledge". If there is certainty as to the consequences of an action, the logic of prevention prevails (2002: 286). The concept of precaution arises in situations where only a relation of possibility or suspicion between a cause and effect can be envisaged. Ewald describes the precautionary principle as occurring "in the presence of risk that is neither measurable nor assessable". He describes this as being a "non-risk" as the logic of precaution applies to what is uncertain.[24] The notion that risk screening and a follow-up risk assessment can identify children and young people who are "destined to join the 5 per cent of offenders responsible for 50-60 per cent of crime is fanciful" (Sutton et al., 2004: 5). In the early stages of offending, it is very difficult to determine who will persist in offending and who is a transient offender. Research shows that there are flows into and out of "the pool of children who develop chronic conduct problems" (2004: 5).

The Bureau's proposal for risk screening assumes that there is "a here-and-to come" premised upon an acknowledgement that there is a determinate threat (the knowledge that there is a segment of offenders who remain persistent offenders), even though that threat is scientifically uncertain in relation to the identification of individual offenders now. This co-exists with the imperative to adopt the precautionary logic to act before the threat reaches a point of irreversibility that has more far-reaching and deleterious consequences for both collective security and the operations of the criminal justice system as an organism: the possibility of an "elsewhen" or "elsewhere" that will inevitably arrive without sufficient preventive action (Ewald, 2002: 287; Massumi, 2005; Anderson, 2010: 789). There is a sense in which there is an imminent but nonetheless uncertain threat, a flooding of children and younger adolescents that have been channelled into diversion where the costs of inaction in the present will be far more detrimental in the future as the consequences of inaction take effect at a more amplifying scale.

Youth justice administrators were being invited to take precautionary action premised on the logic of preventing an anticipated worst-case scenario grounded in a subconscious accusation that current interventions are insufficient in preventing the state's high levels of youth recidivism. The regime of diversion would need to be modified in accordance with an actuarial

technical standard of preventative action. Even after a comprehensive assessment it remains impossible to authoritatively classify levels of risk, paradoxically placing the validity of the intervention in suspense (see Ewald, 2002: 286-287).[25] Precautionary logics are scoped at a longer-term systemic scale of projected harm that exceeds the micro-logistics of assessing any individual's risk. This dilates the distance between the present and the long-term as a massified projection of an adverse future. Moreover, this is founded on the principle that the harms caused should be rectified at the source and the child or young person should be held responsible and pay the price. The traditional legal concept of proportionality is ignored so that the burden of proof is directed to those whose actions may threaten public safety, justified as they are considered as being hazard creators even when they are 10 to 14 years old.

6.4.3 LOBBYING TO REFORM YOUTH DIVERSION

The interval between 2011 and 2012 marks a critical juncture in the Bureau's biopolitical efforts, where researchers waged a concerted attack on youth diversion and perceived limitations in the operations of the *YOA*. This intensification of energies expresses a psychic group co-individuation that seized a direction for action aimed at improving diversion's capacity to combat re-offending. The Bureau's researchers had adopted the view that referral to YJSs was arbitrary and needed to be modulated by a risk assessment as a primary driver for combatting recidivism. These reform efforts had an almost moral imperative to intervene as a "subject", "to calculate itself as a factor of the system-problem to be solved", becoming "external to itself" (Simondon, 1958: 129, cited in Bardin, 2016: 84). By that time the Bureau's researchers were convinced that recidivism was the norm in YJCs and that the young people who were referred to YJCs were indistinguishable from those sanctioned in the criminal courts. Smith and Weatherburn (2012: 1) published data concluding that:

> The evidence strongly suggests that the conference regime under the NSW Young Offenders Act (1997) is no more effective than the NSW Children's Court in reducing juvenile re-offending among people eligible for a conference.

These researchers conducted an international review of evaluative research about YJC's, including the Bureau's prior research, concluding that there was "little basis for confidence that conferencing reduces re-offending at all" (2012: 6). They challenged two meta-analyses that that had concluded that conferencing reduces re-offending by seven to eight percent (Latimer et al., 2005; Bonta et al., 2006). All prior research was considered to be inferior in one way or another in an effort to establish technical grounds for conducting a more authoritative evaluative study.[26] The Bureau's own study by Luke and Lind (2002) was challenged on methodological grounds, where it was speculated that the sample used was biased as a result of police

"cherrypicking" low-risk offenders to YJCs who would otherwise be cautioned prior to the introduction of the *YOA* and that the research failed to sufficiently control for factors that might have influenced re-offending (2012). On the psychic level these researchers had established polarising relations between the Bureau's own interiorised orientation that invalidated the efficacy of YJCs and an exteriorised ensemble of evaluative research and mentalities that threaten this orientation and its affective line of action. In this affective state, it as if the subject has become the world, where differential information is unequivocally rejected even if the subject must resort to speculative claims to discredit alternative collective knowledge/power relations that continue to invest in YJCs (see Simondon, 2020: 282-285).[27]

Smith and Weatherburn (2012: 16) were sceptical about the efficacy of YJCs. Perhaps, a conference is effective if the young person is remorseful and the outcome plan is the result of genuine consensus; however, "it is far from clear that conferencing is required to engender these feelings or that they play any causal role in reducing re-offending". Perhaps, young offenders who express remorse have a pre-existing disposition not to re-offend. Again, the researchers resort to speculation suggesting that many young people referred to YJCs are inappropriate referrals as they pose elevated risks to community safety.[28] It is noteworthy that the Bureau's problematisation completely ignored the high rates of recidivism associated with efforts to reduce re-offending of young people subject to community control. If it really is true that risk case management using the YLS/CMI-AA should lower levels of recidivism, then what do these elevated rates of recidivism imply in terms of the effectiveness of these interventions?

Smith and Weatherburn "re-examined" the relative effectiveness of conferencing and court sanctioning using statistical techniques purported as being able to overcome the selection bias that they considered to be inherent in all prior research worldwide (2012: 2). This positioned the study as providing a more authoritative evaluation founded upon a highly technocratic defence structure for "moderating" the possible criminalisation effects of patterns of police referrals to either intervention.[29] Propensity scoring methods were used to compensate for the impact of "treatment-selection bias", by adjusting the estimates of recidivism to compare effect-sizes between the two "treatment" groups (2012: 6-7). Samples were delimited by excluding all offenders from the comparison groups who did not admit guilt for the index offence and who committed drug offences, sex offenses, offences that resulted in death or traffic offences or did not have a criminal history where they had been sentenced to custody (2012: 8).[30] This study does not concretise the actuarial protocol for estimating recidivism at a higher level of functioning; it is a technical defence that operates to standardise/normalise the data, much like the moderator operations performed in meta-analyses.

Even after undertaking these exhaustive control procedures young people in the conference group were found to be more likely to have committed a property offence, to be non-Indigenous, to be younger, to have fewer prior offences, and not to have had a prior YJC compared to the court sample (Smith and Weatherburn 2012: 11). Overall, most of their statistical analyses did not reveal any significant differences between the two "treatment" groups in relation to the proportion of re-offending, the seriousness of the offending, the time to the first proven re-offence and the number of proven re-offences for both the matched and weighted analyses (13-14, 16). There was one exception to this overall result: if those young people who didn't complete an outcome were excluded from the analysis, the time to re-offend was significantly longer for the conference group in the matched sample analysis. These findings were used as an opportunity to lobby for changes in the way in which referrals are made to conferences to ensure that YJCs incorporate risk reduction measures within conferencing, although this was formulated in very cursory way:

> The challenge for policy makers is to devise a legal and administrative framework that allows the police and/or the courts to refer juvenile offenders to conferencing – while at the same time ensuring that those who need effective intervention and support to reduce the risk of further offending receive it. (2012: 17)

6.4.3.1 CHALLENGING ESTABLISHED MENTALITIES IN YOUTH DIVERSION

Weatherburn and two of his academic colleagues published a paper in the *UNSW Law Journal* challenging the mentalities that have had a substantive influence on youth diversion (Weatherburn et al., 2012). The authors targeted "three dogmas" that they insisted were limiting strategic reform to policy and practice, undermining community safety and public confidence in the youth justice system.[31] These "mistaken" truth claims were the acceptance that the court system itself is criminogenic, that restorative justice is more effective than traditional justice in reducing the risk of further offending, and the idea that if young people were left alone they would grow out of crime. These foundational truths posed a threat to the Bureau's individuating identity, territoriality and authority that was now grounded in the determination to establish actuarial risk prevention measures in diversion. This gradient of perception and group action amplifies conflictual relations both in the internal and external relations of the Bureau's researchers and their allies. Internally, the findings of prior actuarial research were dismissed or devalued in terms of epistemic inefficacy and expendability, intensifying a line of defensive technical individualisation to control for moderating variables emanating from the criminal justice system itself.

For these researchers, at the psychic level the raised visibility of poor outcomes in youth diversion became suffused with polarising affectivo-emotive relations that de-valued and

criticised YJCs. This paper's active campaigning for reform in youth diversion, along with the Bureau's proposal for legislative change to the *Young Offenders Act, 1997 (YOA)* described in the next section, are indicative of the Bureau's active campaigning to influence the collective views and priorities of politicians and the senior administrators of Youth Justice NSW to align youth diversion with the early identification and risk neutralisation of an anticipated population of long-term offenders. The membrane between the internal and external relations of the Bureau had become highly permeable as researchers felt that they had to adapt their epistemic protocols to shortcomings in the youth justice milieu and respond to state priorities and lobby for improvement in policy and practice. The Bureau's political efforts attempted to establish differential relations, an affective disequilibrium at the collective level to establish the conditions of possibility for a strategic shift in orientation, founded on the stubborn insistence that everything can be explained by an integrated understanding of individual differences in criminal risk.[32] This political campaign was indifferent to the embodied experiences of young people, lacking empathy for young offenders entering the youth justice system, the majority of whom were considered to be at elevated risk of being persistent offenders.

Weatherburn et al.'s paper directly confronts policy makers and politicians for failing to properly intervene to deter and address "the underlying causes of crime". The belief that other juvenile justice authorities had mistakenly remained invested in these falsehoods or misguided assumptions establishes conflictual and competitive in-group/out-group relations that bear a resemblance to a propaganda campaign as a result of a singular investment in precautionary risk profiling and risk prevention.[33] By prioritising diversion on the principle of the least intrusive intervention, policy makers were accused of being "caught between the Charybdis of failing to respond to juvenile crime and the Scylla of intervening only to make things worse" (Weatherburn et al., 2012: 779). By assuming that young people grow out of crime, "doing nothing" was described as an irresponsible "escape route" from state responsibility. For the Bureau and their interlocuters, the youth justice system was out-of-balance as it had not developed sufficient measures to combat re-offending until an offender is sanctioned through the court, undermining public confidence in the system itself and exposing the community to unacceptable levels of risk (Weatherburn et al., 2012: 806). The authors insisted: "This needs to change".

In the final section of the paper, titled "life without dogmas" the authors argued that youth diversion needed a risk screening mechanism to ensure that young people identified as having an elevated risk of re-offending were referred to the Children's Court for a "full assessment" using a validated instrument such as the YLS/CMI to assess their criminogenic needs. The courts were to be empowered to place those confirmed of being at high-risk on "an accredited rehabilitation program" as well as taking any other action viewed as being needed (2012: 808).

This proposal was inchoate under the legislative framework of the *YOA* as it was proposed that, after having been administered two diversionary sanctions, all young people should be targeted for risk screening and those that met a critical threshold of risk be channelled to the Children's Court for further processing. A significantly larger number of young people punished under the *YOA* would be channelled into the Children's Court, facing the double-jeopardy of receiving a further punishment founded on anticipated the level of risk they pose to the community.

The proposal was indifferent to the *YOA's* objective to divert young people from the Children's Court and its principle of applying the least intrusive intervention because of the over-riding risk calculus that drove the reform proposal.[34] At the affectivo-emotive level there is an intensity to the reform effort, which is founded on de-legitimating the collective mentalities that continue to inform Youth Justice and imposing a gradient of perception and action imbued with actuarial mentalities and priorities. The internalised superiority of actuarial control is relayed into the collective domain, becoming stridently asserted as if actuarial risk case management was the law. Within this group political economy, there is an expressed low threshold of tolerability for diversion founded on an affective state of fear and insecurity which, in turn, has detrimental amplifying effects for collective efforts to confront the ongoing effects of colonialization in the criminal justice system by diverting Indigenous young people from the court. S. 7 (h) in the *YOA, 1997* incorporates the principle that "the over-representation of Aboriginal and Torres Strait Islander children and young people should be addressed by the use of youth justice conferences, cautions and warnings".

6.4.3.2 THE BUREAU'S PROPOSAL FOR CHANGE

The reforms that the Bureau wanted to see implemented in youth diversion are more clearly outlined in its submission to the Attorney-General and Justice who were then calling for submissions to consider reforms to the *YOA* and the *Criminal (Children's Proceedings) Act, 1987 (CCPA)* (BOCSAR, 2011). Even though that legislative review sought input around a broad constellation of issues,[35] the Bureau's submission tunnelled in on the *YOA*, in response to its consultation paper's questions: "should reducing re-offending be an objective of the YOA?", and "what changes should be made to interventions under the *YOA*, to better address re-offending amongst children and young people?" (DAGJ, 2011: 14, 30). The Bureau's submission challenged the AGJ's discussion paper's terms of reference for the consultative process, arguing:

> The consultation paper contends that most juvenile offenders desist from offending without being sanctioned by the court system or placed in any form of rehabilitation program. This is undoubtedly true. *It does not follow, however, that most juveniles coming into contact with the police and courts will desist* without extensive or intensive

> intervention. Juveniles arrested by the police are not a representative sample of all juvenile offenders. They tend to be among the more persistent of offenders (which is why they get caught). (BOCSAR, 2011: 2, emphasis original)

The Bureau's depiction of young people in the youth justice system as persistent offenders is deployed to justify precautionary measures in the operations of diversion. If roughly 5-6% of the offender population are persistent offenders, then the proposal that most young offenders who enter the system are persistent offenders is highly distorted for strategic effect.[36] The submission argued that, by founding youth diversion on the dogmas previously described, a situation had been created where youth justice authorities had irresponsibly adopted a "hands off" approach, "the worst manifestation of which is that Government agencies do not […] become involved with young offenders until they receive a supervised order from the Children's Court" (2011: 2). The diversionary legislative framework was accused of "flying in the face" of best practice by failing to conduct a comprehensive risk assessment and identify young people at anticipated levels of re-offending to address criminogenic needs that "need to be changed to reduce the risk of re-offending" (2011: 3).

The proposal largely ignored the intent and impact of issuing warnings, cautions or undertaking a YJC on young people. YJCs were devalued as being a misconceived "intermediate sanction" that has constrained the use of the Children's Court to punish and "rehabilitate" young offenders. The paper claimed that the *YOA* afforded "too little weight to offender rehabilitation and too much weight to restorative justice" (2011: 5). It argued that YJCs were not really a punishment because of the requirement that a young person must consent to participating in the conference (2011: 4). The Bureau recommended that YJCs only be used in cases where there is a victim, the offender admits guilt, a victim is willing to participate, the offence is not serious, to ensure that the young offender "can express remorse, apologise to victims and make amends for their offenses" (2011: 4, 6). This conceptualisation narrowed the rationale behind conferences from being a community-based response to offences that meets the needs of victims and offenders (*YOA,* 1997 *s*3 (c)(i) (c)((iii)) to a mechanism that emphasises restitution by the offender and acceptance of responsibility for their offending behaviour reinforced by a program to combat criminogenic needs. The use of warnings and cautions were also to be curtailed, being restricted to young offenders who have not committed serious offences and "judged not to be at significant risk of re-offending" (2011: 4). After committing a third offence (in a five-year period) all offenders should be referred to Youth Justice for a comprehensive risk assessment and placed before the Children's Court for dispensing a punishment that would necessitate a "rehabilitative" effort to combat criminogenic needs.

The recommendations were infused with a punitive affective relation that affords no attention to the due process rights of young people or a human rights framework that would curtail the more punitive elements of criminal justice. They were premised on a data-driven logic given the Bureau's own localised estimates indicating that a substantial proportion of young offenders will re-offend within five years, and the supposed failure to find any consistent evidence that restorative justice reduces the risk or seriousness of youth offending (2011: 5). The focus of attention was on community safety and the administration of actuarial justice as an integrative operative process across all of Youth Justice. The proposal lent support for the formal integration of actuarial risk assessments using the YLS/CMI-AA into sentencing. BOCSAR recommended that the *YOA* needed to incorporate the reduction of "the risk, frequency and seriousness of juvenile offending" into its s. 3 objectives as well as to strengthen public and victim confidence in the youth justice system and provide offenders with an opportunity to apologise to the victims of their offences and make restitution for the harm they have inflicted (2011: 4).

Overall, the Bureau's recommendations obliterate the legal reality that the issuing of a formal caution or any other diversionary sanction is in fact doing justice in a way that is proportionate to the circumstances of the offence and that brings the case to an end. The proposal ignored s. 7(c) in the *YOA* which aims to avoid criminal proceedings against a child if there is an alternate way of dealing with the matter. Greater numbers of young people would be channelled into the Children's Court, violating the principle of proportionality in s. 7(a) that prescribes that the least intrusive intervention be applied. Overall, this would undermine the primary aim of the legislation to divert young people away from the court (s. 3(a)) and would undermine the use of diversionary sanctions as "an efficient and direct response" (s. 3(b)), as offenders would be subject to longer and indefinite periods of risk intervention. Under s. 29 (2B) (5) a person issuing a caution must not (a) attach any conditions to the caution, and (b) must not impose any additional sanction on the child. A significant number of young people who are sanctioned under the *YOA* for their third offence would be placed in a double jeopardy as they are involuntarily taken to the Children's Court where they may receive a further far more intrusive punishment for an offence for which they have already been sanctioned. The proposal expressed a suspicion that young people were receiving too many diversionary sanctions where more decisive action should have been taken earlier.[37] It was founded on a parsimonious economy of tolerability that limits the number of diversionary sanctions that can be meted out to young offenders. The scheme proposes a strategy that approximates the rationale of the discredited "three strikes" legislation, substituting incarceration with intensive risk prevention predicated on the assumption that criminal history is the best predictor of persistent offending.

6.5 DIVERSION WITH INTERVENTION: YOUTH ON TRACK (YOT)

On 26 March 2012 the Liberal-National Party was elected to govern NSW in a landslide defeat of the Labour Party. The prior commitment to reviewing the youth justice legislation was abandoned and the Department of Juvenile Justice was incorporated into a new Justice Cluster under the leadership of the Department of the Attorney General and Justice (DAGJ). DAGJ took the lead in implementing that part of a new 10-year State Plan concerned with improving public confidence in the criminal justice system and reducing levels of re-offending across the state (DAGJ, 2012: 1). The Bureau's messaging about the inadequacies of youth diversion had left their mark within the youth justice political economy. In 2013 the NSW Government committed to piloting the YOT program "to prevent young people becoming entrenched in criminal behaviour" (DAGJ, 2013). This "early intervention" offender program partially realised the Bureau's proposal for intervening with potential "persistent" offenders who had been diverted under the *YOA*. The program coincided with the introduction of an adult "diversionary" program, Life on Track, aimed at working with adult defendants appearing in the Local Court to address their complex needs and reduce the risk of re-offending before the matter went to trial.[38] YOT targets medium- to high-risk offenders who have been diverted under the *YOA* using the same actuarial risk case management regime described in Chapter Four.

NSW Government was convinced that "effective and efficient" interventions would reduce recidivism by consistently assessing risk and matching offender programs to identified criminogenic needs, including in all other human services that become involved in the management of offenders (DAGJ, 2012: 6-7). This was indicative of the extent to which an actuarial risk case management mentality had permeated the collective thought of the state's political apparatus. The Coalition government considered that this risk management needed to be ramped up in terms of enforcing offender compliance, targeting offenders who posed the greatest risk to public safety, and regulating service provision to ensure appropriate criminogenic services. Performance was to be measured by lowering rates of recidivism within 12 months, increasing rates of participation and completion in offender programs, placing more serious violent and sex offenders under intensive supervision, reducing rates of non-compliance, and increasing rates of Aboriginal successful completion in "rehabilitation programs", a signalling of the state's poor performance to date in enrolling and maintaining Indigenous people in the state's mainstream offender programs. For young offenders, performance was measured in terms of increasing participation in offender programs by significantly increasing the number of young people enrolled in the cognitive-behavioural self-change program that had become the flagship technique for addressing criminogenic need in actuarial risk case management that was described in Chapter Four. The effectiveness of these programs was to

be assessed in quantitative terms using the total risk score in the YLS/CMI-AA to demonstrate that a young person's anticipated risk of offending had been reduced.[39]

6.5.1 YOUTH ON TRACK

YOT is "an early intervention scheme for 10 to 17-year-old's that identifies and responds to young people at risk of long-term involvement in the criminal justice system".[40] Juvenile Justice took the lead role to develop the program in 2012 deploying an inter-governmental implementation taskforce. It was endorsed by NSW Cabinet in late 2012 and established in three police Local Area Commands in NSW in July 2013, delivered by the Uniting Church.[41] Since its establishment the program has received widespread support in the youth justice milieu, and the program is now operating in 12 regions across NSW.[42] The key objectives of YOT are to identify in a timely way young people at high risk of continuing in the criminal justice system, to provide one-on-one case management and evidence-informed interventions targeted to address the criminogenic risk factors of the young person, and to provide an evidence-informed family intervention to support the family of young offenders to reduce the young person's contact with the police (Department of Justice, 2016: 1). The program assumes "young people can be deterred from long-term involvement in the criminal justice system by addressing their multiple and complex offending-related needs" (Trimboli, 2019: 1).

The expected outcomes of early intervention include reducing formal conduct with the police in the first 12 months of involvement in the program, reducing reoffending in the longer-term, increasing access to stable accommodation, participation in employment, education and training and community activities in the short-term, and improving long-term well-being by reducing criminogenic risks and needs (Klauzner et al., 2022: 34: see Appendix Four). YOT targets children and young people aged 10 to 17 years who have had at least one formal contact with the police and have been identified by a police Youth Liaison Officer or their school as being at risk of re-offending, or who have at least two formal contacts where a risk screening assessment indicates that they have a 60% or greater chance of re-offending (2022: 4). Diverted young people are enlisted into an "early intervention" program that uses the same logistics and mode of risk case management that is used for young offenders who are sentenced in the Children's Court.

NSW Government continues to invest in YOT as a primary way of providing "prevention and early intervention to address youth crime" (2022: 34). The actuarial logic that drives the program reiterates the Bureau's problematisation of youth diversion described in this chapter:

> Need: […] An early intervention for 10 to 17 year olds who are at risk of becoming persistent offenders, but who have not progressed far enough into the justice system to

> receive a supervised order, was needed. This group has been found to be responsible for a disproportionate amount of crime. An evidence-informed intensive intervention is otherwise not provided until the young person progresses further into the criminal justice system after several formal cautions or charges. (2022: 34)

6.5.1.1 YOT'S OPERATIONAL DOMAIN

YOT is a precautionary regime for actuarial risk case management in the community that has no legal authority. It operates along a permeable boundary that sits alongside youth diversion and that claims to be preventing early career young offenders from eventually being incarcerated. The program's referral mechanism functions as a governmental switch-point that screens and initialises bodies for a more comprehensive risk assessment using the YLS/CMI-AA to establish a case plan to combat criminogenic needs. A governmental switch-point is a relay or informational passage where bodies are transferred from one modality of government to another, becoming modulated by a different regime of functioning. In this instance, the logics of youth diversion, founded on the legal principle of the least intrusive intervention to foster the lives of young people, enters a relation with the actuarial security logic of neutralising the aggregate risks of a segment of young offenders anticipated to pose long-term risks to the community. The legal regime of police diversion decomposes or relaxes its legislated mandate, its mode of operation now resonating with an actuarial technical regime of functioning that would otherwise only be deployed after a young person is sentenced in the Children's Court. Risk screening-referral functions as the switch-point that provides the conditions of possibility for mediating extra-legal community preventative action suspending the child or young person within the relations of capacitation, disablement, and debilitation.

In cases where a young person has two formal contacts with the police a risk screening officer employed by Youth Justice identifies this using the COPS database and uses an automated revised version of the Group Risk Assessment Model (GRAM) developed by Smith and Jones (2008a)[43] in the Bureau to calculate the anticipated risk of re-offending.[44] GRAM uses static risk factors including age, gender, Aboriginal or Torres Strait Islander origin, prior criminal history, and current offences to calculate the level of risk rendering it subject to the same criticisms raised earlier in the chapter about Indigeneity. This instrument was constructed on offending data for young people convicted in the courts and YJCs and had not included those who were warned or cautioned.[45] There are three risk categories: low-to-moderate, moderate-to-high and high-risk, where those anticipated to be moderate-to-high or high-risk are referred to YOT.[46] In addition, discretionary referrals are made by NSW Police Youth Liaison Officers and local primary and secondary schools.[47] Any person who has been supervised by Juvenile Justice is ineligible for the program. Together this networked infrastructure establishes a risk intelligence circuit that straddles technological and informal mechanisms of surveillance and risk securitisation. The

child or young person's privacy rights are ignored as risk information about a history of abuse or school expulsion are leaked through the actuarial codes of the automated risk screening or by the direct communication of this information by state authorities to the co-ordinator the non-government agency delivering the YOT program.

Participation in the program is voluntary, as the young person must consent if they are over the age of 14 years, or if 14 years or younger the parent or guardian must give consent. When the young person consents the case manager must ensure that this they are not coerced, and that the young person has sufficient understanding about what participation in the program entails and of how information about them will be shared with other agencies (in the case of concerns about the child's safety or admissions about offending behaviour). The case worker must assess the capacity of the young person to consent; however, this is done prior to conducting a formal assessment using the Intellectual Disability Screening Questionnaire and the YLS/CMI-AA.

YLS/CMI-AA assesses risk levels and matches elevated domains of criminogenic need to modulate risk case management as described in detail in Chapter Four. Offender management concentrates on family intervention,[48] behavioural intervention, engagement with education[49] and referrals to additional programs and services.[50] Participants may remain in the program for anywhere between three and twelve months depending on the total risk score calculated using YLS/CMI-AA (Klauzer et al., 2022: 4). Near the time of exiting the program an exit plan is developed with the child or young person and family focused on continuing "to improve outcomes and to reduce the young person's likelihood of re-offending" (Trimboli, 2019: 5). The behavioural interventions are individualised by requiring the child or young person to work though up to 12-modules in the Changing Habits and Reaching Targets (CHART) program described in Chapter Four. Using a networked YOT database the young person is re-assessed using the YLS-CMI-AA at three months, six months and on completion of the program to audit reductions in YLC/CMI-AA scores (Klauzer et al., 2022: 34). The case manager records social outcome information upon entry and exit from the program as a way of auditing the capital-ability and amenability of the young person to change. At the same time, this evaluative data is used for auditing the overall effectiveness of the program. The intensification of networked surveillance exposes the young person to the possibility that risk information about breaching court orders, committing a criminal offence, or even disclosures about the intent to commit an offence will be reported by the service provider to the police (NSW Government, 2018: 35).[51]

6.6 CONCLUSION

In this chapter I have described how a group of quantitative researchers at BOCSAR increasingly concentrated their energies on the development of actuarial probability models that were

designed to identify potential high-risk or "persistent offenders" around the time of their first or second contact with the Youth Justice system. These researchers believed that risk screening could be used in youth diversion to refer at risk young people to intensive offender programs to combat chronic recidivism. I understand this as a line of technical individualisation that germinated and intensified as a reciprocal relation amongst this group of researchers. They undertook a series of research projects that strived to resolve an apprehended conflict in the existing operations of youth diversion and their emerging evaluative data about the high levels of recidivism in youth diversion. In Simondon's (2020: 8-9, 259-261) concept of psychic individuation the subject strives to resolve tensions in the milieu surrounding it that it has come into conflict with, becoming "forced to intervene as an element through its action as a subject" (2020: 9). By incorporating the self into the relations of the collective Youth Justice milieu, participation establishes the condition of the individuation of the collective along the reciprocal poles of psychic individuation and collective individuation.

The intensification in this line of research and political campaigning to reform youth diversion became a protracted state of psychical disequilibria that emerged from the Bureau's own line of actuarial research that placed its researchers in conflict with the legislative framework in relation to youth diversion. In the interval between 2005 where the Bureau initially published research indicating that 68% of young offenders re-offend, and 2007 where it initially proposed a risk screening triaging scheme for first-time offenders to combat the state's high rate of youth recidivism, the Bureau had arrived at a fledgling solution with relative ease. The affective state of conflict that this group of researchers experienced was driven more by the delays in convincing legislators and senior policy makers to take precautionary action in the light of their recurrent data. The researchers' line of group action mobilised a repetitive and single-minded line of research and political advocacy strategically aimed at altering collective perceptions about the values and norms that drive youth diversion so that they converged with those of the YLS/CMI-AA.

The line of technical individualisation taken by these researchers was not transductive in its logic whereby a solution might be pursued by discovering a positive way of resolving the tension between these disparate realities, thus creating a new dimension in youth diversion that is not contained in the initial problem. Instead, these researchers deployed power relations that invested in the determinate logic of the YLS/CMI and that had the effect of amplifying its actuarial regime of functioning more widely across the collective milieu of Youth Justice. In the same way that I have demonstrated in Chapters Three and Four, the transductive technical operations that these researchers used in their biopolitical project propagated the YLS/CMI's regime of functioning into new domains, thus establishing a greater degree of convergence

across these operations to facilitate a functional solidarity across the collective networks of youth justice.

Targeting first- and second-time offenders who have been diverted under the *YOA* because they might be at risk of long-term involvement in the criminal justice system disregards the fact that justice has been done when a young person is issued with a formal caution or completes an outcome plan negotiated in a YJC. In the modification in the operations of youth diversion embodied in YOT, the principle of the least intrusive intervention has been sidestepped or withdrawn as an important consideration in the administration of justice. Risk screening now functions as an extra-legal governmental switch-point in police diversion relaying risk information to community authorities who manage children and young people in the same way that they would be managed if they had been sentenced in the Children's Court based on the probability that they might become persistent offenders.

NSW policy about crime prevention is now increasingly being operationalised by actuarial risk case management and the technical normativity of the YLS/CMI-AA. There is now a widespread acceptance amongst diverse stakeholders in NSW that we are doing crime prevention work when we treat young people at risk of entering the system or who have had minimal contact with the system in the same way as if they were sentenced in the courts, deploying an intensive mode of actuarial risk case management to combat criminogenic needs. The next chapter explores how this hegemonic logic has permeated other diversionary offender programs that purport to help vulnerable young people from deepening their involvement in the youth justice system, often contributing to young people's long-term debilitation.

CHAPTER SEVEN: THE DEBILITATION OF YOUNG PEOPLE

7.1 INTRODUCTION

This chapter considers the role of the YLS/CMI-AA in the maintenance of unequal relations and life outcomes for segments of the youth justice population. Critical criminological and legal scholarship has argued that the codes used in these instruments elevate scores for people experiencing structural inequalities, resulting in more punitive interventions that reproduce their marginal or excluded location within these structures. To date, the bulk of this scholarship has concentrated on these actuarial effects in relation to incarceration and its detrimental impact on individuals and communities. I consider actuarial regimes of operation for young offenders within community settings to identify how this distributes segments of the youth population unequally across the gradated relations of neo-liberal capacitation, disablement, and debilitation. The chapter explores the interrelated concerns where First Nations children and young people continue to be over-represented in both the child protection and youth justice systems and how these concerns have been managed by the state. My analysis uses Berlant's (2007) account of slow death, Puar's (2017) concept of debilitation, Hayes (2015) account of the pains of rehabilitation, and Flores' (2016) analysis of wraparound incarceration to examine how the control logics of risk assessment intensify punitive biopolitical interventions for some of the most marginalised and structurally disadvantaged children and young people in the state, thus contributing to their long-term debilitation.

NSW Government has over-relied on preventive measures purportedly aimed at diverting children and young people from these systems using pilot projects that use a welfare-justice control apparatus that treats cultural difference and the traumatic backgrounds of children as if they are obstacles to combatting criminogenic needs, using the deficit and control logics of wraparound incarceration. This has intensified and maintained their involvement in the youth justice system rather than helped them to leave it. I argue that to appreciate the longer-term harmful impacts of this governance it is necessary to consider the state's culpability in maintaining these unequal relations across governmental domains of operation.

The first part of the chapter focuses on the government of First Nations young offenders. I argue that the state's overreliance on actuarial risk case management has significantly curtailed the possibilities for responding to the cultural and material needs of Indigenous children, holding them responsible for managing the precarious life conditions that are a product of the ongoing relations of settler colonialism. The state has an ethical and legal duty to promote the rights of First Nations people and yet in the youth justice milieu Indigeneity has been managed primarily

though deficit frameworks that reinforce and amplify Indigenous criminality within the risk infrastructure of the YLS/CMI-AA. I consider this within the wider political context of the over-representation of First Nations people in the criminal justice system and the state's culpability in reproducing the unequal relations and structures of settler colonialism.

The remainder of the chapter considers the deterioration of targeted populations who enter the youth justice system as marginal, excluded, or vulnerable young people, understood as a debilitating mode of biopolitics that is experienced as a "slow death" within a background of endemic precarity (Berlant, 2007). My analysis considers the governmental response to the care criminalisation of children in out-of-home care that has incorporated "trauma-informed" interventions in conjunction with the combatting of criminogenic needs. Innovations that have emerged at the intersection of the out-of-home-care (OOHC) and youth justice systems to combat the long-term adverse life outcomes for children in the child protection system have deepened their involvement in the youth justice system using the logistics of wraparound incarceration. Vulnerable, disabled, and traumatised young people are subjected to excessive demands, forms of containment and networked regulations that are debilitating, generating psychic tension or "pain" as they experience impasses that immobilise and derail them in the face of difficulties in achieving goals given the aleatory circumstances they find themselves living through.

7.2 "EVIDENCE-BASED OPPRESSION"

Goddard and Meyers (2017: 153) argue that risk assessment instruments like the YLS/CMI and the evidence-based risk intervention offender programs that they prescribe "[launder] the lived experience of racialised inequality into an elevated risk score and [mandate] a framework for intervention which addresses some risk factors for youth while ignoring others". The targeting of criminogenic needs using short-term behaviorist interventions privileges individual-level interventions, often excluding community-wide interventions that address the socio-structural forces that contribute to young people's offending behaviour. Moreover, the neo-liberal emphasis on individual responsibility obligates marginalised young people "to take sole responsibility for navigating the numerous risks produced by socio-structural sources". By sidelining or excluding community-level interventions, they argue that the conditions of possibility for combating structural disparities are highly limited, thus failing to address the "root causes of crime" (2017: 159). The reliance upon normative evidence-based programs maintains structural inequalities for those who enter the youth justice system and are forced to comply with this risk management regime in the face of social injustice (2017: 161).

This line of criticism is commonly made by critical criminologists and critical legal scholars in relation to actuarial risk assessment in both adult corrections and youth justice (Harcourt, 2007; Haines and Case, 2008; Farrall et al., 2010; Hannah-Moffat and Maurutto, 2010; Starr, 2014; Cox, 20-15l van Eijk, 2017). The bulk of this scholarship concentrates on ethno-racial and gendered structural considerations, with lesser attention given to class or socioeconomic inequality. Other factors such as disability and developmental capacity have been afforded much less attention. Given that my investigation has found very few modifications to the YLS/CMI-AA, this chapter critically analyses the longer-term consequences of over-relying on this instrument as the primary solution for combatting youth crime. If the state has placed such a heavy reliance on the targeting of criminogenic needs in so many of its domains of operation in youth justice, then how does this super-saturated actuarial solution contribute to the debilitation of young people's lives? My analysis will begin with the operations of the YLS/CMI-AA and extend to those forces in the state's political economy that fail to adequately address the adverse and precarious circumstances of vulnerable young people. These governmental conditions cannot be limited to the operations of the youth justice milieu alone, as they extend across multiple governmental domains.

7.2.1 YLS/CMI-AA'S PROXIES FOR RACE AND SOCIAL INEQUALITY

There is a consensus in the critical literature that many of the risk domains in instruments like the YLS/CMI contain items that "transform life experiences rooted in race and class inequalities into individual attributes that elevate [the total risk score]" (Goddard and Myers, 2017: 155).[1] Prior criminal history is a proxy for systemic racism in the criminal justice system (Harcourt, 2015; Jones et al., 2002). Items linked to family and living circumstances concerned with poor relations between young people and their parents and poor parental discipline or supervision and "antisocial families in the family" are constituted by complex forces linked to the intergenerational and traumatising effects of settler colonialism, the over-representation of Indigenous peoples in the criminal justice system, disrupted familial relations from having incarcerated parents, cultural biases in interpreting different care practices in Indigenous families, and systemic failures in delivering effective child protection and preventive services for disadvantaged families (Jones et al., 2002). Being "homeless" (included in the family and living circumstances risk domain) and items linked to unemployment and low levels of educational or workplace achievement are proxies for socioeconomic marginality, systemic racism and systemic failures in the education system for addressing cultural difference and other structural issues (e.g., linked to cognitive and mental health disabilities) that contribute to school alienation, school conflict and truancy and suspension (van Eijk, 2017).

First Nations young people and other young people with histories of child abuse and neglect are more likely to score higher on the risk domain concerned with drug and alcohol abuse (Jones et al., 2002; Rugge, 2006). Items linked to leisure ("could make better use of time") are associated with unemployment and poor schooling experiences that heighten young people's vulnerability to excessive policing and criminalisation due to their greater use of public space. Anti-social attitudes (non-compliance with authority, hostility towards the criminal justice system, reluctance to seek help), and anti-social personality (verbal or physical aggression) can be linked to First Nations and marginal young people's hostile and distrustful perception of majority culture and justice, where these affects and forms of resistance are linked to the ongoing relations of settler colonialism and systemic racism (Jones et. al, 2002). First Nations people's cynicism and resistance to participating in offender programs needs to be understood within past and present government policies that have had and continue to have a central role in the destruction of First Nations culture.

Given these coded biases it has been argued that elevated risk scores will generate more punitive interventions that may result in depriving the liberty of adults or young people. This criticism has greater purchase if actuarial risk assessments are being used in sentencing to determine whether someone should be sentenced to prison. Even in jurisdictions where risk assessments are not explicitly used in sentencing, risk mentalities and risk scores covertly influence decision-making as discussed in Chapter Three. Goddard and Meyers (2017: 153) have argued that there is a lack of critical scholarship that explores the impact of these biases in sites of governance other than carceral settings. This gap is particularly pertinent given that most young offenders are managed in the community for relatively short periods of time, although this control network remains reliant on the incarceration of a small segment of young people and a considerable over-reliance on remand as an interim security mechanism prior to sentencing.

While Hoge and Andrews (2011) may have made some minor accommodations to their risk scoring schema to adjust norms to gendered differences, the YLS/CMI 2.0 risk code infrastructure remains premised upon a universal psychological explanation of an individual's criminal behaviour that applies to all populations.[2] The developers pay very limited attention to socio-cultural considerations that are actively discredited. Elsewhere, Andrews and Bonta (2010: 184-187) have cited a series of "post-1978" meta-analyses and other empirical reviews of the relation between social class and crime concluding that the "theoretical dominance of class of origin in mainstream sociological criminology from the 1960s forward was not based on evidence". Their stance in relation to this and other sociocultural structural relations is that "at best" these factors only make "a minor contribution to variation in crime" relative to the Big Four and the moderate four risk domains included in the LSI family of instruments.

Andrews and Bonta (2010) have bracketed out Aboriginality or race from their explanation of criminal conduct. Their primary concern is that race is a variable that potentially challenges the predictive validity of the YLS/CMI (2010: 328-29, 333-34). Aboriginality is understood as having "no unique and significant contribution to the genesis of crime" and efforts are made to validate the instrument by demonstrating there are no statistically significant differences between Aboriginal and non-Aboriginal across the risk domains of the instrument as well as in terms of the instrument's predictive validity (Bonta et al., 1997).[3] Near the time of modifying the instrument, their review of a limited research base was that the instrument applied "to girls and some racial minorities" (2010: 329). The complex and differential relations of race are re-inscribed and condensed in the instrument as a responsivity factor that warrants further assessment and consideration:

> Cultural/Ethnic Issues: The youth is facing difficulties or conflicts relating to cultural, ethnic, or religious adjustment. Examples include, but are not limited to, immigration issues, language barriers, or being the victim of racially motivated abuse. Case management may include programs (e.g., language classes) designed to resolve cultural/ethic issues. (Hoge and Andrews, 2011: 62)

Ethno-racial difference is treated as a potential barrier to the effective targeting of criminogenic needs, exclusively understood as being an individual adjustment problem associated with cultural conflict. This rationale arises from a Western notion of the self and world that cannot be assumed to be culturally mobile (Jones et al., 2002: 190). Andrews and Bonta concede that culturally sensitive programming might involve restorative justice initiatives where victim participation and offender responsibility are core to "resolving conflict" generated by the harms of crime (Andrews and Bonta, 2010: 453). Conflict here becomes more narrowly defined as offending behaviour divorced from an appreciation of differences in cultural values and norms. They understand Indigenous peoples' view of crime as being "a community problem" that is consistent with restorative justice practices while imposing the condition that these programs need to demonstrate that they can reduce recidivism. Culturally sensitive programming is data-driven, informed by the risk parameters in the YLS/CMI to maintain its operations.

Their vision of correctional programming is ethnocentric, while failing to recognise how the structures of settler colonialism continue to adversely impact First Nations people. Consequently, the power relations of settler colonialism remain naturalised, enabling a universal mode of Western neo-liberal governance in correctional programming that draws its authority from Western law (Morgensen, 2011: 53). By attempting to assimilate First Nations people into this programming, settler colonialism's "logic of elimination" continues by amalgamating First Nations peoples, cultures, and lands into the body of the settler nation (Wolfe, 1999: 163). This

amalgamation narrows or erases the possibilities for distinctive Indigenous nationalities (Morgensen, 2011: 56).

Yassine (2019: 137) describes the absence of gender and race in the YLS/CMI-AA's risk scoring schema as tactic of "governing through neutrality". By making the claim that the instrument is gender-neutral or race-neutral, the developers actively de-gender and de-racialise the constitutive relations that result in the clearly apparent statistical differences in the overall rates of offending for young women and men and Indigenous and non-Indigenous young people.[4] The over-representation of young men and Indigenous young people is de-politicised and elided enabling the anticipatory profiling of risk as it is distributed across the operational domains of the instrument, mainstreaming these operations in offender programming. The destructuration of the political, economic, cultural, and spiritual foundations of Indigenous communities that continue to operate in settler colonialism is linked to endemic challenging life circumstances associated with residential instability, family/marital difficulties, school/employment difficulties and so on that are "the very factors that come to reinforce risk levels and undergird higher risk-assessment scores" for Indigenous offenders (Martell et al., 2011: 240). At the same time, the inclusion of cultural difference in the responsivity checklist of the instrument constitutes the Indigenous young offender as being "riskier" because of cultural factors (2011: 241).

Working together, the risk codes in the instrument and the imperative to combat cultural differences as a "responsivity" factor constitute Indigenous young people as being intrinsically criminogenic, reinforcing colonial conceptions of Indigenous peoples as being a deficit/problematic people. The inclusion of Indigeneity in offender programming reconstitutes cultural identity and race as a dynamic factor, an additional need that must be incorporated into risk management (Martell et al., 2011: 241). At the end of the risk assessment process a young person's cultural identity is treated as a possible risk-reducing factor that can assist in combatting recidivism after successfully completing a culturally appropriate offender program. At the institutional level this rationale and its strategy for increasing Indigenous participation in youth justice programming is enacted as a policy of Indigenization that makes minor accommodations to incorporate First Nations peoples and structures within settler colonial policy to facilitate their integration into the dominant culture.

7.3 ACTUARIAL JUSTICE AND FIRST NATIONS YOUNG PEOPLE

In its investigation into First Nations people's deaths in custody and its linkage with their over-representation in prison and youth detention, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (Johnston, 1991) made 339 recommendations to instigate systemic reform at the federal and state and territory levels of governance. Recommendation 62 required

government and First Nations organisations to negotiate and develop strategies to reduce the rate at which First Nations children and young people are involved in the welfare and criminal justice systems and "[…] reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared in need of care, detained, imprisoned or otherwise". In this section I concentrate on NSW's efforts to reduce First Nations young people's over-representation in the youth justice system, linking the state's failure to achieve this with its developing reliance on actuarial mechanisms of responding to youth crime. The Department of Juvenile Justice (DJJ) developed its first Aboriginal over-representation strategic plan in the same year that it began reconfiguring its offender management programs using the YLS/CMI-AA.

In 2018, Deloitte Access Economics tendered a report to the Department of the Prime Minister and Cabinet that reviewed the implementation of the Royal Commission's recommendations over a 27-year period claiming that 78% of the recommendations had been fully or mostly implemented, 16% partially implemented and 6% not implemented. By concentrating on actions taken by government, the review has been criticised for failing to examine the outcomes of these actions, effectively masking the state's poor performance in effecting change (Higgins and Florance, 2020; Anthony et al., 2021).[5] The rate of First Nations people in prison has increased over the past three decades while 48% of the current youth detention population are First Nations children, who are now 17 times more likely to be incarcerated (Anthony et al., 2021: 3). Currently First Nations young people and First Nations women are more overrepresented than First Nations men (Communities and Justice, 2018: 6).

DJJ's first strategic plan aimed to reduce the number of First Nations young people under its control, especially those in custody (DJJ, 2001: 23). In 1999-2000 35% of NSW's youth detention population were from First Nations backgrounds, a rate that had been steadily increasing while the overall youth detention population was falling (2001: 17-18). Section 7 (h) of the *Young Offenders Act, 1997 (YOA)* had established the principle of reducing over-representation by using warnings, cautions and YJC's; however, First Nations young people were under-represented in the state's diversionary schemes. The plan was the first acknowledgement that the department should assume overall responsibility for addressing over-representation, rather than placing the burden on its Aboriginal Program Support Officers; however, responsibility for managing the program remained within its Aboriginal Unit (2001: 13).

The recruitment of Indigenous staff has been a core strategy adopted in the Department's plans to lower the rates of Indigenous young people in the system, premised on the idea that the presence of Indigenous youth justice professionals would ensure that the mainstream interventions favoured by the department would make them "culturally appropriate". This way

of thinking deploys the same kind of logic used by Hoge and Andrews (2003, 2011) where "matching" a case worker with the cultural background of the client would facilitate a higher level of active participation or "responsivity" from the culturally different young person. The plan established a campaign to recruit, develop career pathways and retain more Indigenous staff, in addition to the 6% already working in the department (2001: 7). Difficulties in the recruitment and retention of Indigenous staff have continued to limit the success of this strategy which has been reiterated in its successive plans (DJJ, 2007: 2-3; JJ, 2011: 8). In 2012 DJJ invested in an Indigenous cultural respect training program to improve the majoritarian non-Indigenous staff's capacity to "effectively engage with Aboriginal and Torres Strait Islander young people and their families".[6] This was indicative not only of the significant disparity between lower levels of Indigenous staff relative to the Indigenous client base but also of the pervasive under-representation of Indigenous young people in the offender programs provided by DJJ and its funded community-based partners.

DJJ initially adopted the paternalistic view that First Nations communities needed pedagogical instruction to understand the "support needs" of their own young people and programs to strengthen capacity and resilience narrowly defined by young people's participation in mainstream diversionary and offender programs and the delivery of some (primarily pilot/experimental) culturally appropriate programs (DJJ, 2001: 5).[7] An explicit strategy of developing and maintaining partnerships with Indigenous communities and organisations is subsumed in its plans, often framed as a form of consultancy (DJJ, 2007: 2; JJ, 2011: 2,3,9). In 2007-11 the department began establishing Aboriginal Advisory Committees in its detention centres to develop culturally appropriate programs and improve the centres' relations with local Indigenous elders and cultural support and services to improve re-integration into local communities (DJJ, 2007: 2). The notion of "partnership" is largely oriented towards funding a small number of pilot Indigenous offender programs or enlisting Indigenous elders and other respected community members into its own programs.

Youth justice in NSW has articulated principles of recognition and consultation with very little action to back these principles up.[8] Recommendation 188 of the RCIADIC required that governments negotiate with Aboriginal organisations and communities to determine procedures and processes to ensure that "the self-determination principle is applied in the design of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people". The Deloitte review claimed that this principle had been fully implemented across all jurisdictions (2018: 374-77), however this claim is contested by Anthony et al. (2021: 68) who argue that self-determination has been replaced by centralised policy development and decision-making that "substantively excludes First Nations peoples affected by policy". In citing actions that supported the self-determination principle in NSW, the

Deloitte review cited two piecemeal measures: the OCHRE initiative established in 2011 to improve education and employment outcomes for Aboriginal people and enhance service accountability by using local decision-making mechanisms, and the establishment of a self-determination principle in the *Children and Young Persons (Care and Protection) Act, 1998*.

From the inception of this strategic framework for "the effective reintegration" of Indigenous young people, First Nations local communities were considered as being a barrier to success. These communities were understood as being "in crisis", a deficit framing that paternalistically considered that without the state's intervention these communities were unable to assist Indigenous young people "in choosing positive alternatives to offending behaviour" (DJJ, 2001: 2). The department aligned itself with NSW Government's emerging whole-of-government "capacity-building" strategy.[9] DJJ regarded First Nations communities as one of many governmental and community stakeholders who could only be empowered if they were provided with "a high level of government involvement", reproducing settler colonial relations premised on a general scheme of improvement of a problematic population (Haebich, 2015: 22). Deborah Bird Rose (1996: 6) has described this as "deep-colonising", where practices embedded in institutions that are meant to reverse the processes of colonisation contribute to their continuation and maintenance.

7.3.1 REDUCING OVER-REPRESENTATION BY INCREASING "ACCESS" TO OFFENDER PROGRAMS

The strategic plans have adopted several strategies to increase First Nations young people's access to internal and external programs and services. This included employing Aboriginal convenors to increase access to Youth Justice Conferences, channelling more First Nations offenders into community-based orders, attempting to improve their completion rate while on these orders, increasing their referral to community-based offender programs, increasing the Department's mentoring program, increasing their access to specialist services and programs, and establishing more effective post-release programs. Even though these strategies were couched as "diverting" First Nations young people from custody or progression through the system, the primary strategy was to increase the level of regulation exercised over First Nations young people, their families, and their communities within the boundaries of the system rather than concentrating energies on preventing Indigenous young people from entering the system (2001: 9). The more implicit strategy has been to target First Nations young people for more effective offender programs on the premise that this would reduce the level of re-offending, while providing minimal programming to ensure that these interventions were culturally appropriate. In subsequent plans there was a more explicit and intensifying focus on "reducing re-offending levels" by increasing First nations young people's access to the Department's

programs (DJJ, 2007: 3-5; JJ, 2011: 4-5). Success in reducing contacts with the system was measured by evidence determining whether Indigenous participation in offender programs was increasing relative to non-Indigenous offenders.[10] Given the paucity of Indigenous cultural offender programs, this strategy is overwhelmingly assimilationist in character, while attempting to tighten controls over Indigenous young people in the system. Under the enduring structure of settler colonialism, assimilation remains a key instrument managing the continuing presence of Indigenous peoples, in particular children and young people (Haebich, 2015: 29).

Despite the valorisation of evidence-based policy and practice, there is a paucity of collective knowledge about how to deliver culturally appropriate offender programs for Indigenous young people in NSW. Targeted programming for Indigenous offenders was prioritised in DJJ's second strategic plan, located within a framework of evaluation aimed at demonstrating that these programs can effectively reduce the risk, severity, and frequency of re-offending (DJJ, 2007: 3). This was reiterated in the next plan, now clearly embedded in an orientation concerned with addressing criminogenic risk factors (JJ, 2011: 4). In the context of programming for Māori offenders, Webb (2018: 9-11) has shown how culture-related risk factors such as lack of cultural identity, negative image of Māoridom and the presence or absence of group membership are framed as being a symptom of anti-social emotions and thoughts and grafted onto the cognitive behavioural programs used in mainstream actuarial risk case management. In operational environments where the YLS/CMI-AA is the primary driver of risk case management, the targeting of criminogenic needs and cultural programming became fused in a youth justice response to the problematisation of Indigenous young people's over-representation.

7.3.2 THE YOUTH KOORI COURT

The Youth Koori Court (YKC) illustrates this well. The YKC was established as a pilot project in 2015 operating initially at Parramatta Children's courthouse and extended its operations in Surry Hills in 2019. The court is modelled on First Nations sentencing courts operating in Australia and overseas that have been designed to provide culturally respectful treatment for First Nation offenders and increase the legitimacy of the Western legal system while recognising and enrolling Elders and other respected Indigenous community members into the sentencing process (Williams et al., 2018: 37). The main objectives of the YKC are to increase confidence in the criminal justice system and compliance with court orders, and to reduce risk factors relating to re-offending, the rate of non-appearances of young Indigenous offenders in the court process, and the rate of breaches of bail (Ooi and Rahman, 2022: 3). Participants are a relatively small and highly selective group of Indigenous young people who must reside in the two jurisdictions in which the court operates, and have been charged with a summary offence, and be willing to participate (2022: 3).[11]

Prior to being accepted into the program, anyone referred is administered a risk screening assessment to "determine what areas they need or want support with" (Williams et al., 2018: 59). If accepted, sentencing is deferred for up to 12 months to develop and implement an "action and support" plan. Within a month of a suitability meeting, a "conference" is held under the co-ordination of the Children's Court magistrate and an extensive circle of people who sit around an oval table – elders, a lawyer from the Aboriginal Legal Service, the Police Prosecutor, a civil lawyer from the Legal Aid Commission, a Juvenile Justice Officer, other professionals who are involved in providing services to the young person, the young person's supports – and the young person who sits opposite the magistrate (2018: 9).[12] This places intense pressure on the young person to agree to the risk management plan which is written-up by the magistrate for ratification (2018: 60).[13] The priorities established in the plan establish a control mechanism where the factors that are addressed combine concerns relating to cultural identity, criminogenic need, severe social disadvantage, systemic racism and precarity.[14] To justify a non-carceral sanction, the determination of punishment is suspended subjecting participants to an intensive period of networked risk surveillance and risk intervention. A recent evaluation study found that YKC participants were almost twice more likely compared to other First Nations young people to be sentenced to a custodial sentence after participating in the program, thus extending the duration of intensive risk case management and control considerably for just under a quarter of participants (Ooi and Rahman, 2022: 12).[15]

In effect, participants undertake probation without a sentence, becoming the target of intensive "wrap-around" services that are highly challenging given their life circumstances. Intended to divert young people from detention, they are subject to intensive formal supervision and control that determines their sentence in twelve months' time locking the young person under the court's control. The extension of the YKC into this community-based network of interventions establishes new relations between this milieu and youth detention that enable young people to be doubly punished for minor violations like breaching curfews, leaving home or truancy and by criminal sanctioning.[16] Of the 35 people who entered the YKC program in 2016, only 20 graduated. They spent anywhere between 135 to 470 days in the program, where some participants were re-admitted due to subsequent re-offending, thus postponing their possible graduation (Williams et al., 2018: 151).

Participants spent an average of 57 days in custody on remand prior to entering the program and an average of 25 days in custody while enrolled in the program. While a small number of participants were never in custody, some participants spent far more time returning to detention (up to 141 days) because of re-offending or other risk management concerns. Even after completing the program, an offender may be sentenced to detention. The relations between the two settings are intentional, described by Flores (2016: 7) as being "wraparound

incarceration". The YKC holds Indigenous young people in a captive position in relation to the state's carceral power. They are suspended in an extended hearing about their circumstances and capacity to change that "disaggregates and individualises both the Indigenous-state relationship and the remedies that can be offered to redress the injustices of that relationship" (Briggs, 2020: 79). These Indigenisation strategies effectively distance the settler state from its ongoing harms and injustices on the quite minor promise that a small number of Indigenous young people might receive an alternative sanction or a shorter sentence.[17]

7.3.3 THE LIMITATIONS OF NSW GOVERNMENT'S ATTEMPT TO REDUCE THE OVER-REPRESENTATION OF FIRST NATIONS YOUNG PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

In September 2017, the Legislative Assembly Committee on Law and Safety (LA CLS) initiated an "Inquiry into the adequacy of diversionary programs to deter juvenile offenders from long-term involvement with the criminal justice system" (LA CLS, 2018: 197).[18] The Bureau of Crime Statistics and Research's politicisation of the inadequacies of diversion had left their mark. There remained a "high level of concern that youth diversionary programs were not working or were poorly focused" and were failing to deter too many young offenders from long-term involvement in the criminal justice system (Provost, 2021).[19] The inquiry and its final report conducted an exhaustive audit of the operations of the youth justice system that provides an archive on NSW's performance in assisting young people to break free of the criminal justice system and that dovetails with the state's performance in reducing Indigenous over-representation.

The LA CLS adopted the broad view that diversion can be deployed "at every stage of a young person's life" including early intervention to prevent entry into the criminal justice system (LA CLS, 2018: 2). However, the bulk of its deliberations concentrated on existing pre-court measures under the *YOA*, pre-sentence diversion in bail support, and risk case management in the community and post-conviction. Many of the Committee's recommendations were aimed at proliferating the use of diversion and modifying legislative provisions to support this. This was considered an anecdote for systemic shortcomings associated with poor access to diversion and its underutilisation by the police and judiciary. One of major barriers to diversion was the poor or lack of "access" to diversion in regional, rural, or remote areas (2018: 57-92).[20] Children and young people were less likely to be diverted because the police are more likely to proceed straight to prosecution, and there was evidence that in court the rates of diversion were lower in regions where there were no specialist children's magistrates. This geo-political reality discriminates against young people based on the intersectional relations of location, the unequal distribution of governmental resources exacerbated by neo-liberal austerity in service delivery,

racialised differences in criminalisation that deliver a disproportionate number of Indigenous young people to local courts in these regions, and the neglect or insufficient attention to the differentials of gendered and ethno-racial difference.

Reform efforts concentrated on investing more resources in the expansion of police diversion and expanding the reach of the Children's Court across the state. The solutions for diverting people away from the court were to be implemented by employing more youth liaison officers and children's magistrates and training them in the existing legislative provisions. In addition, it was recommended that community-based diversionary offender programs and other services to address the vulnerabilities and needs of children and young people should be expanded across the state.

In the Committee's examination of the over-representation of Indigenous young people, it was considered that if its "generic" recommendations made to multiply rates of diversion at every possible stage of the criminal justice process were implemented, this would assist in reducing this over-representation (LA CLS, 2018: 160). In spite of repeatedly citing statistics that signalled a far more deleterious biopolitical reality for Indigenous young people compared to non-Indigenous young people, this was an endorsement of the existing regime of functioning without any substantive consideration of concrete practices that sustain this endemic situation for Indigenous peoples.[21] It was assumed that if geopolitical disparities in the youth justice infrastructure across the metropolitan/regional-rural-remote divide were improved, then rates of diversion would improve for Indigenous young people.

At the same time, the Committee maintained the view that diversionary programs must be sensitive to the needs of young women and girls and culturally and linguistically diverse communities and must be culturally appropriate for Indigenous children and young people (LA LSC, 2018: 155). The Committee articulated concerns about the cultural appropriateness of existing diversionary programs for Indigenous young people (2018: 162-164). There was a paucity of diversionary programs for Indigenous young people in regional NSW, while most existing programs are not culturally appropriate or developed from a place-based framework controlled and staffed by Aboriginal people. In addition to the YKC, there was only a small number of offender programs that provide cultural support where cultural identity is included as a protective factor.[22] The significant lack of progress in developing evidence-based Indigenous offender programs because of state inaction and delay continues to debilitate Indigenous children and young people who continue to fare poorly in mainstream programs. This also curtails the self-determination of Indigenous communities in the youth justice milieu.

NSW Government policy for reducing over-representation continues to focus on lowering Indigenous young people's rates of incarceration and community orders, while increasing rates

of participation in "early intervention" programs, the primary investment being on extending Youth on Track, as discussed in Chapter Six (NSW Government, 2018: 7, 24; Communities and Justice, 2018: 7-10). Even though roughly 60% of YOT's participants are from First Nations backgrounds the program is not necessarily attentive to cultural difference, nor effective in retaining First Nations people in the program .[23] A recent evaluation that found that there were no significant differences between young people who participated in YOT and a control group, where 51.2% of participants re-offended within 12 months, this rising to 60.6% over a 24-month tracking period (Klauzner et al., 2020: 18). Even though most of these participants had no prior court appearances 30% of these participants were sentenced to youth custody within 24 months.

The most recent strategic plan for reducing over-representation across the state supposedly aims to help Indigenous peoples "avoid contact with the justice system", reduce the length of time they spend in custody, and reduce the rate of re-offending (Communities and Justice, 2018: 7). In the youth justice system, "avoiding contact" has transmuted into referring Indigenous young people to YJCs or the YKC, or diverting them to one of four pilot programs, including YOT, thus impacting on a very small proportion of the Indigenous youth population where the remainder have no access to culturally appropriate programs.[24] None of these schemes prevent Indigenous young people from being in the system; rather, these programs intensify levels of intervention and surveillance for young people who have entered the system even when the young person is exiting detention.[25] NSW has failed to reduce the rate of First Nations young people in youth detention and on community orders; even though the numbers of young people in detention and on community supervision has dropped over the past five years, there has been an increase in the rate for First Nations people compared to non-Indigenous young people (AIHW, 2021a: 36-37, 38-40).

7.4 THE STATE'S CULPABILITY IN MAINTAINING YOUNG PEOPLE'S PRECARITY

The state's supposed emphasis on "diverting" First Nations young people from detention has maintained their location within the criminal justice system. The imperative to combat criminogenic needs has been coupled with "culturally appropriate" modes of risk management that operates in the community as a mode of "wraparound incarceration". The state's delays, inaction, and relatively minor efforts to reduce levels of over-representation has worsened Indigenous people's structural location, exacerbating the disparities between Indigenous and non-Indigenous people. In this section I look more closely at the state's role in the maintenance and deterioration of targeted populations, an experience that Berlant (2007: 754, 759) has described as a "slow death", defined as follows:

> [A slow death is] the physical wearing out of a population and the deterioration of people in that population that is very nearly a defining condition of their experience and historical existence […]. In the scene of a slow death, a condition of being worn out by the activity of reproducing life, agency can be an activity of maintenance, not making; fantasy, without grandiosity; sentience, without full intentionality; inconsistency, without shattering; embodying, alongside embodiment. (2007: 754)

In her account, this experience is amplified under global/national regimes of capitalist subordination and particular governmentality regimes, where bodily attrition is both "at an extreme and in a zone of ordinariness" (2007: 754). Slow death occurs in environments that are distinguishable by a predictable chronicity, a back-formation that is locatable within the "temporalities of the endemic" (2007: 756).[26] Berlant (2007: 762) asserts: "While death is usually deemed an event in contrast to one's 'extensivity', in this domain dying and the ordinary reproduction of life are co-extensive".[27] She considers that a mobilisation of social justice framed at the sensationalist register of catastrophe or the rhetoric of crisis effects a slippage that belies the constitutive point that slow death is a structurally intractable problem that looks like crisis or catastrophe when attached to freshly exemplary bodies (e.g., mediated reports about Aboriginal deaths in custody that are brought into sharper focus at the collective level and then forgotten only to re-emerge later) (2007: 761-62).[28] Within the context of slow death, the risks of long-term involvement in the criminal justice system are linked to a series of adverse and chronic conditions associated with dispossession, the stolen generations, transgenerational histories of trauma, involvement in the child protection system, being taken into out-of-home care (OOHC), living in unsettled/no accommodation, long-term social disadvantage, being excluded from school, facing considerable barriers to employment, having one or more disabilities, mental health disorders, chronic ill-health, and spending substantial periods of time away from family and kin.[29]

When policy makers and senior correctional authorities rely on actuarial instruments to manage the anticipated risks of re-offending, at least two affective relations are operationalised that contaminate and distort responses to the extreme precarity and vulnerabilities of young offenders who enter the youth justice system. Firstly, there is an active disavowal of the selective policing and sentencing practices that contribute to the disproportionate rates for segments of the youth offender population.[30] As described later, some of these pathways into the system criminalise challenging behaviours that could be managed differently; however, once in the system, vulnerable young people are subject to anticipatory risk management even when they are "diverted". These criminalisation processes are bracketed out of the instruments, although they haunt the risk codes, especially in the domain concerned with prior criminal history, operating as proxies for the disparities in the operations of criminalisation and the burdens that

young people must consequently endure. Secondly, as Harcourt (2007: 28) has demonstrated, the use of prediction instruments generates "a distortive effect on the targeted population, a distortion that ultimately operates as a rachet". Actuarial profiling uses skewed data about offending of a racial population that subsequently targets them disproportionality. The imbalance between the segments of the youth offender population that enter the system is further amplified as they are, in turn, even more disproportionately supervised and risk managed because of their risk profile, over-exposing them to disabling interventions and pressures to manage the self without sufficient attention to the barriers that may interfere with this.

It can be further argued that failures in other governmental domains have amplifying debilitating effects for children and young people continuing to multiply negative impacts over the life course. Nowhere is this more evident than in relation to the failings of the child protection system that yields a disproportionate number of children from disadvantaged backgrounds into the OOHC system despite a legislative environment that emphasises applying the least intrusive intervention to ensure the safety and well-being of the child and using OOHC as a last resort given its potential harms to children and families (*Children and Young Persons (Care and Protection) Act, 1998* s. 9 (2)(c) and s. 10A (3)(a)).

In 2018, an independent review of OOHC concluded that "the NSW system was ineffective and unsustainable" (Tune, 2018: 3). It was failing to meet children's needs, unable to improve outcomes for children and families with complex needs and failing to evaluate the effectiveness of its programs. Between 2013 and 2018 the OOHC population had doubled, while the length of stay had risen to 12.6 years (2018: 12). Children are more likely to be removed from their families because of chronic adversity, socioeconomic disadvantage, drug and alcohol abuse, domestic violence, mental health issues, intergenerational trauma and systemic racism (Tune 2018: 63-67).[31] This implicates other service providers in a general failure to provide adequate services or to effectively co-ordinate services across agencies to help reduce the numbers of children entering the child protection system, which remains crisis oriented in a biopolitical context of endemic conditions. Indigenous children remain over-represented in OOHC, constituting 7.4% of those in care compared to 1% of non-Indigenous children and young people. In 2019 an independent review[32] of the high removal rates of Indigenous children in NSW found that compared to non-Indigenous peers, Indigenous children were four times more likely to be screened-in as being at risk of significant harm (ROSH)[33] at least once by age five (45% vs 12%) and eight times more likely to enter care by the age of five (8% vs 1%) (Family is Culture, 2019: 40). The proportion of Indigenous children in OOHC compared to non-Indigenous children is rising, with this group comprising 37.9% of all children in care in 2017-18.[34]

The long-term adverse impact of taking children into OOHC has been modelled by Family and Community Service's Stronger Communities Investment Unit and Taylor Fry, clearly demonstrating its amplifying effects when children in the child protection system enter the youth justice system. They developed an actuarial model that estimated "all next generation OOHC costs" fully attributed to the mother up until age 40 if the current "governmental policy and operational environments" remained unchanged (Stronger Community Investment Unit/Taylor Fry, 2018: 12). The project defined groups of vulnerable children and young people to model the "root causes of vulnerability" that drive poor social outcomes in these groups and the interdependencies between service use (2018: 11). The projection of high future costs for key government services was used as a "proxy of vulnerability" to provide a baseline to monitor and evaluate governmental changes in the delivery of services across governmental sectors (2018: 13).[35] The forecasting identified 7% of the state's children and young people as being the most vulnerable with detrimental long-term consequences across several governmental domains.[36]

Of the five most vulnerable groups identified, children and young people affected by mental illness, children aged 0-5, and young adolescents aged 10-14 were most likely to experience long-term adverse effects.[37] It was projected that young mothers are 15 times more likely to have children in OOHC and 0.3 times as likely to complete the HSC; vulnerable young adolescents are 3.4 times more likely to use social housing as adults; and, vulnerable young people transitioning to adulthood are two times more likely to be welfare recipients (2018: 21-22). Even at five years or younger the interrelation between gender and Indigeneity was evident in the estimates for this cohort,[38] demonstrating how this has intergenerational consequences: females were 3.9 times more likely to have children who enter OOHC; 2.5% of the group were estimated to be more likely to enter custody, with 1.5 more likely to be involved in the justice system;[39] Indigenous children were over-represented, comprising 16% of this group (2018: 63-64). The two core drivers that render this group more vulnerable were entering the child protection system and interacting with the justice sector (2018: 71).

Precarity compounds at each successive age group modelled, where risks attributable to governmental operations generate multiplier effects that become associated with adverse outcomes and that are deleterious to well-being. For vulnerable children aged 10-14[40] the odds of females in this group having children in OOHC increased to 5.4, while the chances of interacting with the justice system increased slightly;[41] Indigenous people constituted 20% of this sub-group (2018: 77-8). Only 48% of this group were projected to complete the HSC; they are 2.5 times more likely to have drug and alcohol hospital admissions, 2.3 times more likely to use mental health services, and 3.4 times more likely to use social housing. The core drivers for the debilitation of this group were spending time in OOHC, becoming a young mother, and

entering custody (2018: 85). The most at-risk young people at age 16 to 18 were characterised by having been in the justice system and being assessed as being at risk of significant harm in the past five years (2018: 91). With no change in social policy and governmental functioning, females were now 12.2 times more likely to have children who end up in OOHC, 8.1% more likely to end up in custody, 4.3 times more likely to have drug and alcohol related hospital admissions, three times more likely to use mental health services, and less likely to complete the HSC. Indigenous people constituted 24% of this sub-group (2018: 91-2). The core drivers behind these adverse futures were entering into custody, becoming a young mother, and not completing the HSC (2018: 99).

7.4.1 DEBILITATION, ACTUARIAL RISK MANAGEMENT AND WIDER GOVERNMENTAL CONCERNS

Even though entry into the child protection system is widely recognised as a pathway into offending, the YLS/CMI-AA does not include it as a risk factor.[42] I am not arguing for its inclusion, as this would attribute the harmful actions of others, including the state, to the child and hold them responsible for managing the harms incurred by others as if this was yet another criminogenic need. The YLS/CMI-AA includes child abuse, neglect and witnessing domestic violence as responsivity issues that may need to incorporate "victim-oriented services" into case management (Hoge and Andrews, 2011: 64). The emphasis on targeting criminogenic needs risks giving insufficient attention to supporting young people who may be experiencing a range of behavioural and mental health issues. There are risk items in the instrument that can be assessed as being criminogenic needs even though these challenging behaviours may have resulted from the trauma of abuse and neglect, including the trauma of being removed from family and kin and the systemic forms of abuse that are associated with OOHC.[43] This is a misattribution problem given that actuarial risk assessment's orientation towards criminogenic needs abducts the assessor's perceptual faculties and subsequently fails to recognise and respond to the needs of traumatised and disabled young people. There is research that has demonstrated that the challenging behaviours of young people with a disability and young people experiencing difficulties in OOHC are managed by community agencies, the police, the judiciary, and youth justice authorities as criminal events because of the inability of authorities to either manage these behaviours or even recognise that they are symptoms of trauma, behavioural difficulties, mental health issues or disability.[44]

I illustrate this in relation to OOHC, which is an area of particular concern given the rising over-representation of Indigenous children and young people in this part of the child protection system. The increasing level of child removal is consistent with Australia's assimilationist policy of forced Indigenous child removals that Haebich (2016: 28) considers as integral to the settler

colony's enduring structure and its punitive policies and agendas. Children and young people who come into OOHC have multiple vulnerabilities that are exacerbated by the experience of being in care. In addition to exposure to abuse in care, OOHC children suffer physical, mental, and cultural neglect across multiple agencies, multiple placements, disconnection from Indigenous culture, family, kin and community, homelessness and "care criminalisation" (Family is Culture, 2019: 226-36).

McFarlane (2018: 416) has highlighted the way in which placement in OOHC exacerbates the risk that abused and neglected children will become involved in the juvenile justice system. She describes this as "care-criminalisation": "the processes by which inadequately trained and poorly renumerated staff […] [who] fail to understand and are unable to resolve conflict rely on police to manage children's behaviour". Minor confrontations between staff and young people (such as not obeying an instruction) trigger an outburst and a display of challenging behaviour that results in staff calling the police, where the child is frequently arrested and prosecuted in the Children's Court. If the child were with their families, relatives, or extended kin this is more likely to result in a disciplinary response rather than being arrested. The neo-liberal transfer of OOHC to the non-government sector has exacerbated working conditions where staff both fail to recognise and adequately respond to the ongoing trauma in young people's lives. This situation is further inflamed by an over-scrutiny of residential care homes by the police where residents are often breached while on bail. More recent research indicates that leaving care without permission,[45] lack of suitable alternate accommodation, and responding to difficult behaviour by using an AVO are additional contributing factors to care-criminalisation (Colvin et al., 2018; McGrath et al., 2020).

Children and young people in OOHC appearing in the Children's Court in NSW are more likely to have a prior criminal record, to be taken directly to court, and to be younger at the time of their first appearance (MacFarlane, 2018: 418-19). At the time of the most recent appearance, they were more likely to be placed on remand, spend longer on remand, and be placed on a good behaviour bond at the time of sentencing (2018: 422). They are more likely to be from Indigenous backgrounds, to have experienced custodial sentences, to have evidence of a mental health condition, to be homeless, to have educational problems and to appear in court in relation to an Apprehension Violence Order (McGrath et al., 2020: 6). McGrath et al. found that charges arising in the care environment led to being placed on remand "as a result of welfare disadvantages rather than criminal offending" (2020: 10).[46]

Concerns about OOHC practices have generated reforms that valorise "therapeutic" interventions that traverse the OOHC and youth justice governmental domains. To reduce the frequency of police involvement in responding to young people living in residential services,

attempts have been made to "divert" young people from the criminal justice system by establishing early intervention and a multi-agency commitment to address the "complex needs" of children and young people in care (NSW Ombudsman, 2019: 7). OOHC service providers have become responsibilised to manage the challenging behaviours of their clients using "trauma-informed" interventions.[47] Other initiatives have attempted to meet therapeutic needs as a mechanism for young people who appear in the Children's Court, deploying the same logistics as wraparound incarceration.[48] One of these "wraparound services" operates at Broadmeadow Children's Court to provide "alternative service pathways" for young people who present at the court (Audit Office of NSW, 2020: 50). The scheme is described as holistic and strengths-based, providing a "warm referral pathway" to services that young offenders might not be able to access because of poor inter-agency co-ordination. It operates as a governmental switch point that conducts a comprehensive assessment of criminogenic and other needs prior to an individual's trial and sentencing to facilitate their long-term engagement in wrap-around services to reduce the risks of re-offending.

Another of these pilot programs, "A place to go", operates in Penrith to provide short-term residential accommodation to young people who would otherwise be refused bail because of accommodation issues (Audit Office of NSW, 2020: 48). It provides 12 weeks residential care and after-care for 12 more weeks to help the young person find permanent accommodation, situating the young person within a dense inter-agency network of control.[49] While living at the centre, these young people are assessed to formulate "therapeutic treatment plans" driven by a trauma-informed program initially developed in the US in the 1980s for treating adult mental health patients (Bloom, 2017). The program is saturated with therapeutic rationales, deploying cognitive behavioural techniques to develop "emotional intelligence" and problem-solving skills to break "dysfunctional" ways of thinking and acting, emphasising strategies to ensure the safety of self and others presuming that young people with accommodation difficulties are harm-generating individuals given their abusive or debilitating histories.[50]

The response to young people's "complex needs" and vulnerabilities has established a continuous series of intense regulatory relations at the front-end when they are taken to the Children's Court and at the back end where attempts are made to promote voluntary participation in community programs, integrating criminogenic needs and therapeutic interventions. By combining the logics of actuarial risk case management and therapeutic intervention, the young person remains in the orbit of the youth justice system, while extending the conditions of possibility for long-term after-care at the end of a sentence. While the incorporation of therapeutic operations into youth justice appeases stakeholder concerns about complex needs and vulnerabilities, the control network extends deeper into the community, remaining structured around an individualised deficit model of aggregate risk management,

undermining the young person's status as a vulnerable person, and maintaining their penal identification (Stanley and Froidville, 2020: 538). These logistics afford little or no recognition of Indigenous ways of being, reproducing the unequal relations of settler colonialism that continue to position First Nations children and young people as deficit-laden risks living in debilitating life conditions because of governmental relations (2020: 53-94).

7.4.2 CAPACITATION, DISABLEMENT AND DEBILITATION

In Chapter Four I briefly characterised actuarial risk case management as operating within relations of capacitation, disablement, and debilitation, arguing that this positions already debilitated bodies within an assimilationist and ableist set of neo-liberal expectations that demand self-entrepreneurship. Puar describes these relations in this way:

> Capacity and debility are […] generated by increasingly demanding neoliberal formulations of health, agency, and choice – what I call liberal eugenics of lifestyle programming – that produce, along with biotechnologies and bioinformatics, population aggregates. Those 'folded' into life are seen as more capacious or on the side of capacity, while those targeted for premature or slow death are figured as on the side of debility. (2017: 13)

The valorisation of targeted wraparound services for vulnerable populations and diversionary apparatuses for populations that are over-represented in the youth justice system reproduce neo-liberalism's heightened demands for bodily capacity, while unequally marking out certain populations for a debilitating and ongoing slow death. Puar (2017: xii-xiv) has foregrounded the concept of debilitation to interrogate biopolitical regimes that slowly wear down populations as a normal consequence of chronic illness, disablement and disability, unequal access to services and health care, capitalist exploitation, racialised disparities associated with settler colonialism, and the governmental apparatuses that sustain these unequal relations. The operations of the YLS/CMI-AA and its amalgam of interventions to address responsivity factors regularise young people's lives along the distributing and unequal relations of capacitation, disablement, and debilitation. With no guarantee of success, the young person is obligated to invest in a self-improvement program to avoid an adverse future, suspending them with an intense and multi-faceted behavioural containment program to evaluate their capacity for change. This highly coercive attempt to foster self-regulation operates within the orbit of the court and the threat of further punishment, indefinitely maintaining young people's relations with the criminal justice system rather than enabling them to escape its clutches.

Flores' (2016: 114) account of young women captured within wraparound incarceration found that most were unable to break free of the criminal justice system, even when they experienced

positive turning points that might support desistance while under its control. Within the Australian context, Halsey (2007: 1215-1220) has demonstrated that young men who experience repeated incarceration-release-reincarceration oscillate between affective states of overriding optimism – of desires to "make good" – and affective states of despair or disillusionment in the face of aleatory circumstances that confront them in the community and the experience of being "repeatedly let down by the processes designed to assist (them) […] in times of overwhelming adversity". While actuarial risk management regimes attribute relapse and re-offending to anti-social traits in the young person, this research demonstrates "how situational and structural factors overwhelm some young men's capacities to attain a competent level of citizenship", deepening their involvement in the youth justice system (Halsey and Deegan, 2015: 176).

Halsey (2007: 1211) has characterised the multifaceted forces that derail young offenders and contribute to re-offending as the "pains of release".[51] The struggle to find stable accommodation, being placed in problematic placements, expectations to stay away from long-time friends, using alcohol and drugs to cope, earning enough money to do more than just get by, the sudden death of friends and relatives and coping with a lack of support from youth justice authorities, are constitutive relations that generate recidivism. Nugent and Schinkel (2016: 570) have identified some of the "pains of desistance" young people experience in the struggle to "go straight". Even though they wanted to get a job, establish a stable relationship, or isolate themselves from friends to stop re-offending, this generated considerable stress and contributed to their isolation. Hopes and goals were constantly challenged by adverse circumstances, limited opportunities, a lack of social capital and the difficulties of shedding the stigma of their criminal identity.[52] Hope became increasingly difficult to sustain becoming a source of constant pain, or goals were scaled back and increasingly focused on day-to-day survival, leaving some young people very isolated and withdrawn (see Nugent, 2017).

The concept of "pain" is a useful lens through which to consider the active ways in which the YLS/CMI-AA's control of relations and its mediating high intensity offender programs and supervision are debilitating for young people. The matching of the level of supervision with the total risk score suspends medium- and high-risk offenders to the pains of a disabling and persistent supervision.[53] Writing about the "pains of rehabilitation", Hayes (2015: 99) argues that the proponents of rehabilitation "should recognise that all penal interventions inflict multiple pains" and that "supervised community penalties [are] systems of 'pain delivery'".[54] When Sykes (1958: 64) originally developed the concept in relation to imprisonment, he argued that it was broad enough to extend beyond the physical to include the psychosocial, encompassing intentionally inflicted forms of suffering and unintended consequences. Risk management programs require that penal subjects "display how it has re-fashioned his or her

riskiness; thus performing the internalised containment of risk" (McNeill, 2019: 210). This operates as a continuous psychological power, a straitjacket, exercised on the penal subject in community programs where the adequacy of the performance must be endorsed by those delivering the program or supervising the young person to maintain their semi-freedom.

Crewe (2011: 518-20) has described this as "the pains of self-government" where the burden of control is placed on the young person who is held responsible for multifarious decisions and actions.[55] Cognitive behavioural programs "assume the right to be highly intrusive, encouraging [the penal subject] to expose their personal beliefs and private emotions" (2011: 519). This transfer of responsibility from state intervention onto the offender can be experienced as "walking on eggshells", being perpetually anxious about "screwing things up". The experience involves a sense of tightness where the power relation effectively "wraps(s) them up, smother(s) them and incite(s) them to conduct themselves in particular ways" (2011: 522). In Chapter Four I characterised this this as a mobile form of behavioural containment or disablement. Crewe describes this feeling of being held responsible as gripping hold of the penal subject to harness and fashion a new kind of person. It establishes and maintains a more continuous mode of modulating control that the penal subject must carry with them as part of their existence (2011: 523). Crewe characterises this as an experience of "tightness":

> The term 'tightness' captures the feelings of tension and anxiety generated by uncertainty (Freeman and Seymour, 2010), and the sense of not knowing which way to move, for fear of getting it wrong. It conveys the way that power operates both closely and anonymously, working like an invisible harness on the self. It is all-encompassing and invasive, in that it promotes self-regulation of all aspects of conduct, addressing both the psyche and the body. There are few zones of autonomy, either spatial or psychological, where the reach of power can be escaped. (2011: 522)

Although Cox (2011) has conducted her analysis in youth imprisonment, her focus was on the behavioural programs that aimed to get young offenders to take responsibility for their actions, gain greater control over their emotions and become self-motivated. This enveloping behavioural change program was a source of psychic tension as individuals were disciplined and punished to comply with the program while trying to maintain their own sense of agency. The desired outcome of effective self-regulation was externally and vigorously imposed curtailing the opportunities for an authentic exercise of self-government. Cox (2011: 604) considers this control as being ironic as "it takes place in contexts where young people have few opportunities for social mobility" and can result in their continuing enmeshment in the criminal justice system. Halsey (2007: 1214) has also drawn attention to the psychic tension that is experienced by young offenders who oscillate between the affective states of hope and despair while under

community supervision. His research indicates that young people subjected to criminal justice supervision reach a critical limit where they experience a loss of agency and desperation, adopting a fatalistic attitude that arises "from intolerable circumstances apt to undermine desistance" (Halsey et al., 2017: 2 *fn1).*[56]

The intense behavioural conditions imposed on young people establish an affective relation that is inherently conflictual and that may work against them, wearing them out. Berlant (2011: 1) describes this relation as cruel optimism:

> A relation of cruel optimism exists when something you desire is actually an obstacle to your flourishing. It might involve food, or a kind of love; it might be a fantasy of the good life, or a political project. It might rest on something simpler, too, like a new habit that promises to induce in you an improved way of being. These kinds of optimistic relation are not inherently cruel. They become cruel only when the object that draws your attachment actively impedes the aim that brought you to it initially.

Nugent (2017: 8) has described young offenders' identification of future goals as a source of cruel optimism where a lack of progress suspends them in an indefinite state of being, a frustrating experience of lives being on hold or stalled, of not arriving at a destination. The pains of self-government described by Crewe as a sense of tightness can be understood as a self-limiting affective state that disables bodily movement because of excessive anxiety and fear. One way this can occur is when young people isolate themselves from prior emotional connections and supports to avoid the possibility of re-offending. This is accompanied by a heightened anxiety about moving around in the community because of a fear about running into old friends or coming under the radar of the police (Nugent and Schinkel, 2016: 575-577; Nugent, 2017: 235-239). In some cases, this results in a self-imposed form of immobilisation where the young person develops an excessive fear about leaving their home. Bottoms (2013: 82) has described this as a kind of "self-binding" that is harmful as it can result in a complete isolation from the social sphere. In this state of anxiety, the subject becomes constrained and unable to resolve the disparity between what is and what might be by limiting their response in an intrasubjective way rather than opening the self to new thresholds of individuation that are more than the subject's current state of being (Coombes, 2013: 32; Simondon, 2020: 283-285). In Simondon's view anxiety is an active effort made by the subject to resolve the tension between their current state of individuation and pre-individual reality, by "containing itself within the limits of the individual" remaining a lone subject that prevents "other here and nows from coming into existence" (Coombes, 2013: 33; Simondon, 2020: 282).

To understand how actuarial risk management operates as a debilitating force requires an analysis of the impasse between the affective dimensions that are sensed by the subject in a

polarising way and that are under constant revision in relation to what is going on in their lives, of what seems possible and blocked in personal/collective life (Berlant, 2011: 4). The possibilities that are implied in the capacitating relations of the YLS/CMI-AA in relation to normativity and social mobility may also conflict with a young person's material circumstances, their historical present or back-formation of the environments in which they live. An impasse designates a time of faltering and perturbation where a person or a situation cannot move forward (2011: 4). In moments of impasse, the subject becomes stuck in a present, an experience of precariousness that opens out into anxiety (2011: 199). The situation demands action, but the subject keeps moving "in the same place" still uncertain about which course of action to take.[57]

Hayes (2015: 9) found that offenders who were the most engaged with rehabilitation obligations suffered the most pains that were directly linked to their efforts to change their lives. Supervision, including being asked to talk about their prior offending behaviour and its triggers, exacerbated pre-existing mental health issues and feelings of shame and self-worth (2015: 2; see also Durnescu, 2011: 537). There has been no research that considers how developmental capacity or disability may place unreasonable burdens on young offenders in that they may not be able to meet the demands of self-government simply because of the imperative to administer offender programs. The goals associated with self-entrepreneurship and self-control remain a source of tension for young people who live in milieus marked by "ongoingness, getting by, and living on, where structural inequalities are dispersed and the pacing of experience is uneven and often mediated by […] phenomena that are not prone to capture by a conscious organisation" (Berlant, 2011: 99-100).

In Puar's (2017, 2015) conceptualisation, debilitation is a biopolitical mode of power that is weaponised using disproportionate force to disable and dehumanise bodies, operating as an accelerated assault on bodily, affective, and infrastructural fronts. She understands it as an instrument that targets resistance itself, a primary vector in the ongoing structure of settler colonialism (2015: 6).[58] This mode of debilitation is the most evident in youth detention centres where instruments of torture such as body restraints, spit hoods and the routine use of solitary confinement and segregation are used to suppress young people's resistance and submit to detention's control with no regard for the psychological and cognitive injuries that this causes young people (Anthony, 2018a, b).

In community supervision debilitation is mediated by a collective affective relation that bears down on the penal subject because of a risk calculation that constitutes the subject as "untrustworthy; as unworthy of dominion […] a bad bet" (McNeill, 2019b: 225). This distorts and informs youth justice authorities' perception and actions, a relation that McNeill describes as the "malopticon": an impersonal gaze that misrecognises and deindividuates the offender,

situating them in a control apparatus that "undermines confidence in their redeemability by perennially misrecognising and discrediting them" (2019b: 226). In the malopticon penal subjects "suffer the pain of not being seen; at least not as they would recognise themselves" (2019b: 225).[59] He understands this as a long-term process of civic degradation that is projected onto offenders and suspends them in an apparatus of control under categorical suspicion inducing social and psychological harms that may be internalised or resisted.

Offender re-integration is contingent on the successful embodiment of personal transformation where individuals are always expected "to 'work on' some deficient aspect of their personal life" (Miller, 2014: 324). Miller argues that this is not achievable within neo-liberal welfare-criminal justice apparatuses that work in tandem to manage criminality, welfare dependence and deviance within the marginalised and poverty-stricken communities in which offenders live. The perennial uncertainty about whether an offender will stop re-offending makes it difficult for the risk subject to escape their history of offending (Durnesco, 2011; Hayes, 2015). There are considerable psychological pressures for offenders to transform themselves into productive citizens through programs that locate their inner life as the primary site for intervention. They must submit to these programs, becoming a "work in progress", a project of the self that becomes a lifelong process. Miller (2014: 325) comments: "a changed life is one of constant (re)evaluation, (re)discovery, and above all consistent progress toward the moving target of personal transformation".

The misrecognition of the offender as exclusively being a risk-bearing subject has damaging social consequences and psychological effects as offenders suffer from status inequality, depriving or diminishing their full citizenship while minimising the neo-liberal state's liabilities (McNeill, 2019b: 226). McNeill's analysis of the harmful effects of aggregate risk management understands its control operations as over-riding its supposed rehabilitative aims. Offenders are managed as a bundle of risk factors rather than being rights-bearers entitled to support to address social, economic, and racial disparities. Miller demonstrates that offender programs do not aim to remove the barriers offenders face in the labour, housing, and educational markets. Rather they seek "to enhance the soft skills and personal characteristics of [… offenders], transforming them into the kinds of people that will make informed, rational decisions when faced with a dilemma" (2014: 317). For example, the traditional rehabilitative aim of gaining employment has been reconfigured in the post-industrial economy with workforce development programs to make offenders more self-sufficient, marketable, and positioned within a work-ethic while failing to deliver long-term or full-time work benefits (2014: 317-320). This regulates the conduct of the risk subject to comply with the conditions of risk plans, while measuring success in terms of program completion rather than securing work or other measures that might indicate overcoming the structural disparities that offenders experience.

The risk subject is actively engaged and interpellated into a constant project of self-transformation while remaining under risk surveillance and the threat of a breach order. This neo-liberal/post-welfare strategy that incorporates hybrid welfare-state community offender programs has been described by Wacquant (2012: 237) as a variant of poverty policy that concentrates criminal justice interventions within racially stratified, poor, rural, and urban communities. As a biopolitical strategy this can be understood as an intentional debilitating policy that contributes to the "concentration of social disadvantage within already blighted community areas, constraining the mobility of the always-already raced bodies occupying these spaces" (Miller, 2014: 307).

7.5 CONCLUSION

The biopolitics of actuarial risk management hinges on the division between the neo-liberal capacitation of bodies and the inevitable disablement and debilitation of others whose precarity overexposes them to forces that disqualify certain modes of living, extends the horizon of life in the criminal justice system, and amplifies uneven outcomes in health, education, employment, and longevity. Given the high levels of youth recidivism associated with many of the penal sites in the youth justice security milieu, the targeting of medium- to high-risk bodies enables a networked and metastable security management of an anticipated and chronic threat. NSW's recidivism data lends poor support for Hoge and Andrews' (2011) claim that the targeting of elevated risk levels provides effective rehabilitation. Rather, the YLS/CMI supports the logic of wraparound incarceration or a mobile and disabling mode of incapacitation, generating debilitating mass effects. Actuarial risk case management is an active biopolitical force that subjects a disproportionate number of young people to disabling control, outright harm and debilitating social and psychic effects reproducing uneven disparities in relation to poverty, racism, capitalistic exploitation, and settler colonialism.

This conclusion needs to be situated within the wider context of neo-liberal governmental policies and apparatuses that have reduced the state's capacity to respond adequately to the needs of vulnerable children and young people. The "complex needs" of young people who enter the youth justice system have often been misrecognised and criminalised and are now managed through intense hybrid welfare/justice control apparatuses that treat cultural difference, disability, and histories of trauma as if they are obstacles to combatting criminogenic needs, using the deficit and control logics of wraparound incarceration. These recent "innovations" have deepened young people's location within the criminal justice system rather than diverting them into appropriate support services, let alone into place-based initiatives that would address social inequalities more holistically. In relation to First Nations children and young people, state policies to reduce over-representation in the child protection and youth justice

systems have deepened their involvement in the youth justice system, amplifying longer-term disparities in educational outcomes, health status, employment prospects, intergenerational OOHC, welfare dependency and incarceration in the adult criminal justice system. NSW's government's over-investment in offender programs like the YOT or the YKC which are driven by the operations of the YLS/CMI-AA have resulted in programs that extend more intensive levels of control into First Nations children, families, and communities, while only making minor accommodations to First Nations peoples' right to self-determination or genuine partnerships in addressing the crime problem. The Indigenisation of youth justice policy and practice has not enabled culturally appropriate interventions to proliferate; rather, it has incorporated First Nations Elders, community leaders and others into the machinery of "white justice", reproducing the structures of settler colonialism and its logic of extermination.

CONCLUSION

In constructing the arguments presented in this thesis, I have used Simondon's processual thinking about the genesis and evolution of technical objects to gain a greater sense of the technical individualisation of actuarial risk case management in youth justice. My research analysis provides a novel conceptual framework for critically evaluating the Youth Level of Service/Case Management's regime of functioning and its capacity for realising new values and norms given disparate informational forces that emanate from the collective milieu in which it operates. The YLS/CMI has proliferated across more and more of Youth Justice NSW's key operational sites. In the first decade of implementation, actuarial risk case management was used to target young offenders who had been sentenced through the Children's Court as well as those young people on remand or on bail. Over the second decade of the 2000s actuarial risk case management has restructured aspects of youth diversion, extending the operations of the YLS/CMI into "diversionary" schemes such as Youth on Track (YOT) as well as hybrid welfare/justice programs that purport to be diverting vulnerable young people away from the justice system.

My key research findings, conclusions and the limitations of my research and outline for future research are summarised under the following four sections.

C.1 THE TECHNICAL INDIVIDUALISATION OF ACTUARIAL CASE MANAGEMENT

I analysed the YLC/CMI's mode of operation in Chapter Two and Chapter Four. The instrument concretises a technical schema where its anticipatory data structure modulates the mixed milieus of the risk assessment and the risk case management of young people to achieve a convergence of functioning. The instrument's infrastructure establishes individualising relations along a series of transductive operations that propagate incrementally across: (1) the calculation of the risk score for each risk domain in the instrument and the calculation of the total risk score; (2) the interpolation of these risk scores into a risk profile; (3) the translation of this into a risk management plan; and, (4) a review of the risk scores which may result in a modification of the parameters of the risk intervention. Each of these four operations involve a differentiating process that occurs at the intersection of disparate information captured from the milieu in which a young person lives, and the determinate risk codes used to undertake each calculation that transform information into probabilistic risk scores that modulate decisions about how to intervene.

Working through the intermediary of a human operator, each successive operation can be understood as involving an exchange of different kinds of information between the internal

dynamics of the instrument and its associated milieu over a series of transductive exchanges. Transduction is an operation where one type of information enters into relation with another in an event that produces a fundamental change in their emergent properties (Iliadis, 2013: 11). In the operation of calculating a total risk score there is a passage to a new threshold of determination where each disparate element of the risk scoring system is transformed through the individualising process that generates the risk classification. This transduction continues in a neighbouring region concerned with profiling criminogenic needs to organise the sub-scores for each of the risk domains structured into the instrument that is profiling to identify elevates zones of risk, which is then relayed to the next operational domain. Each transductive operation across these regions "puts into relation" risk information at each of its thresholds of calculation or signification, establishing an interoperability of functioning across the instrument's four operational domains. The direction of case management unfolds as "an event in which certain immanent properties are expressed" because of variations or fluctuations in risk information, becoming actional in the management of young people (Hui, 2015: 78).

Nonetheless this convergence of functions between risk classification and case management is not possible without Hoge and Andrew's rules for case classification. The principles of risk, need, and responsivity are not technical operations; instead, they express a will-to-power to ensure practitioner compliance with the YLS/CMI's schema of functioning. As the primary enunciative function, this imposes the imperative to target criminogenic needs as the primary focus for assessing an offender's capacity for "rehabilitation" (Andrews et al., 1990). These classification rules distribute subject positions and establish the enunciative frame of reference for penal authorities and others enlisted into the anticipatory regime of risk surveillance and prevention to communicate with one another and adjust their line of preventive action in strategic alignment with the risk control parameters of the instrument's risk profile and its risk case management plan. It is not only the anticipatory codes installed into these instruments but also the rules for intervening into the lives of offenders that limit the possibilities for how we might attempt to rehabilitate young people. The instrument's regime of functioning delimits the positivity of knowing and acting that has a substantive impact on how Youth Justice is conceived and operationalised, shaping professional subjectivity, and having significant consequences for the lives of young people.

My analysis has drawn attention to the YLS/CMI's deployment of risk classification, risk profiling, and risk management as being a metastable individualising process rather than being determinate in its structuring of relations over the duration of a young person's sentence or alternate intervention. The initial risk classification and the collateral risk profile and risk management plan are provisional and remain open to recalibration for a more strategic and proactive targeting of elevating trajectories of risk evident in young people's lives. This

establishes a more continuous and intensive line of modulation in actuarial risk case management. The initial risk classification and risk profile structures the relations of preventive action undertaken by a network of authorities, while the operative technical process that recalculates the level of risk and that readjusts the parameters of the risk profile and risk management facilitates a change in the mode of intervention to achieve greater control over the apprehended level of risk (or in less common cases, relaxes the level of control). Networked risk intelligence data is used to actively adjust the regulatory parameters used to optimise the neutralisation of anticipated trajectories of risk.

Young people are managed as if they are an ensemble of technical variables, emergent properties of the risk parameters operationalised in the YLS/CMI. The offender becomes constituted as a risk subject who is permanently enrolled in Youth Justice's client database as a member of the youth offender population. Data can be extrapolated about the subject without necessarily having direct contact with them and relayed across the key operational sites of Youth Justice, straddling the statutory relations of the state and its partnerships with community-based organisations enlisted in the offender management of young people. The stockpiling of this information enables data to circulate at virtual speed between diverse authorities and the key actuarial settings in which the YLS/CMI modulates risk case management. Aggregate data management enhances a state of preparedness so that authorities can act at critical thresholds to recalibrate preventative action, to transfer subjects between penal sites (e.g., between the community and youth detention), and to integrate archived risk data to resume actuarial operations if a young person returns to the youth justice system. As Tucker (2013: 33) describes it, technical individualisation links bodies to the technical object where they become the "products of processes that are always-already technological and biological, and through which agency is distributed". This exposes young people to an anticipatory tracking gaze and form of data capture whereby "their activity produces the very data registered" to help extrapolate their future location as they are moving to enable the target to become more reachable (Sprenger, 2019: 79, 81).

Andrews and his colleagues have argued that adhering to the risk/need/responsivity principles will be rewarded by evidence that risk scores will be lowered. However, given the high levels of recidivism evident in Youth Justice NSW, it can be concluded that the technical individualisation of young offenders is geared towards exercising greater degrees of actuarial control over young people who are subject to mandated controls for relatively short periods of time. In my examination of the operations of the YLS/CMI, I contend that the developers' incorporation of a modulatory structure for recalculating the level of risk has hard-wired a mechanism for regulating the fundamental underdetermination that is inherent in any prediction of the risk of re-offending. The technicity of this element has the capacity to reduce the margin of

indeterminacy of the instrument's classification of the level of risk and its collateral risk profile, thus assisting to stabilise and optimise the overall operations of actuarial risk case management. Enabling metastability in risk assessment and risk management achieves greater control over the minds and bodies of young people, enhancing youth justice interventions as an effective security milieu.

Actuarial operations are indifferent to many of the legislative principles specified in youth justice legislation in NSW. In blindly accepting that using the YLS/CMI is the embodiment of best practice in a policy milieu committed to evidence-based practice, policy makers and senior administrators have paid insufficient attention to due process considerations in the legislation or have treated these provisions in a naïve way. This is particularly evident in the imperative to begin anticipating and managing risk prior to a young person being found guilty and sentenced in the Children's Court as well as the policy provisions that seek to gain a young person's consent for participating in risk management interventions despite having no choice but to try to participate in interventions such as Changing Habits and Reaching Targets (CHART).

Tasked with having to try to help the unprecedented level of young people on remand to obtain bail, Youth Justice has pre-empted their committal to state control by conducting a risk assessment and in many cases beginning to manage these risks as if the youth in question had been sentenced to a community-based order, or by enrolling them in youth detention's behaviour management schemes. Risk data is unproblematically registered in the client database establishing the first "step along a path of actuarial justice" (Feeley and Simon, 1994: 176). In cases where the court requests a background report prior to sentencing, risk information is indirectly fed into the report infecting the sentencing decision with actuarial information and risk management mentalities that crystallise in the report's recommendations about sentencing options. By advancing case management policies that integrate the deployment of the YLS/CMI and its risk screening version across its key domains of operation, Youth Justice has legitimated administrative norms of conduct that amplify actuarial concerns and that would not be permitted in a more traditional rights regime (Feeley, 2006: 229). In addition, actuarially informed decisions about case management operate with little concern for the principles of just deserts in punishment, legitimating futures-driven interventions that are disproportionate to the nature and circumstances of the offence.

Because the YLS/CMI abducts the perceptual and cognitive faculties of youth justice authorities to anticipate a young persons' risky future and begin preparing for it as if it is already present, these authorities and young people are interpellated into an affective state of anticipation. This fosters an ethos of preparedness, an imperative to anticipate the future, and a permanent state of vigilance. Efforts are made to foster young people's active participation in their risk case

management plan under the chimera of a contract to seed the conditions for a mode of "regulated self-regulation" (Crawford, 2003: 487) modulated by the priorities established in the YLS/CMI's risk profile. Logistically, young people are asked to anticipate the future and actively engage in a conditional program of self-improvement described by Puar (2009: 163) as being a neo-liberal relation of capacitation. This constitutes the young person as if they were a neo-liberal entrepreneur or prudential subject despite their developmental status or any disability they may have. At the same time, they are exposed to a networked mode of regulation that is more disabling in impact, operating as a mobile form of behavioural containment that curtails and contains their movements. Under these intensified and demanding conditions there is no normative guarantee or rehabilitation or re-integration, rather young people are thoroughly exposed and under a constant pressure to make positive choices and bring about changes in their lives despite the level of debilitation they experience in their lives.

C.2 THE TENDENCY FOR ACTUARIAL EXPANSION

Adams et al. (2009: 250-253) contend that anticipatory regimes operate through a logic of expansion that extends their reach in time and space to facilitate tactical interventions that both prevent and enable possible futures in greater alignment with valued biopolitical projects. Chapters Three, Six and Seven have all demonstrated that actuarial risk case management propagates transductively across an increasing number of operational sites within Youth Justice NSW. This is exemplified in the case of the Youth on Track (YOT) early intervention program described in Chapter Six and the "innovations" in diverting young people from youth detention and remand that operate as a mode of wraparound incarceration outlined in Chapter Seven. Actuarial activity structures and saturates a domain of operation and then propagates from that region to another extending the process in a way that is analogous to that of contagion (Simondon, 2020: 13). Each structural region "serves as a principle and model as an initiator for constituting the following region, such that a modification thereby extends progressively throughout this structuring operation".

Since the late 1990s, youth justice in NSW has continued to use rationales and practices that are heterogenous and in conflict with one another, indicative of degrees of incoherence (Goldson et al., 2021: 36-45; Chapter 3). The differences in operative structures between the systems of actuarial risk case management and restorative justice conferences or the formal cautioning of young offenders by the police have been a source of tension or conflict, an informational force that emanates from the milieu that has intensified pre-existing tensions and germinated actuarial risk management into diversionary schemes in ways that are contrary to the logics and practices of diversion. In complex milieus such as this Simondon (2020: 13) argues that transduction advances at a variable pace that extends into a domain of heterogeneity, as a

reticular structuring relation that incorporates multiple dimensions and disparate relations and that has the characteristic of a reticular or netlike structuring relation that extends in various directions from the "operational centre" that has become normalised in the YLS/CMI's regime of functioning. The operation of transduction traverses two disparate orders or structures – for example, the anticipation and management of criminogenic needs and a community-based mediation of the harms of crime – to bring into being a restructuring of operative relations in the region that has become colonised by actuarial forces.

In this case a partial technocratic and managerial resolution to a perceived inadequacy of Youth Justice Conferences to address the risk of re-offending was achieved by imposing the requirement that Youth Justice conference co-ordinators conduct a risk screening of young offenders as part of their intake requirements and ensure that risk concerns are integrated into the outcome plans developed at the conference. Together, the imposition of the two regulatory elements into YJCs generated a dephasing and restructuring in the conferencing process that compromised the integrity of a participatory and genuinely community-based form of conflict resolution between key stakeholders impacted by crime.

The establishment of the YOT "early intervention" program in 2013 in NSW is indicative of the amplification of actuarial risk case management as a hegemonic panacea to collective anxieties about the possibility that children and young people might become persistent offenders. By installing a risk-screening device into NSW Police's operational database, children and young people who have received two diversionary interventions under the *Young Offenders Act, 1997* (*YOA*) have automatically become the subject of a suspicion that they may be at risk of long-term involvement in the criminal justice system. This risk screening device functions as a governmental switch-point that establishes an informational passage that transfers bodies from the finality of having been diverted to an indeterminate and more indefinite location as an anticipated long-term member of the offender population. In this passage, intensified efforts are made to take preventive action by managing these young people in the same way as if they had been convicted in the Children's Court. The establishment of this actuarial infrastructure is precautionary in its mode of operation, ignoring key elements of the principles inscribed in the legislative principles of the *YOA* that gives priority to using the least intrusive intervention appropriate to the circumstances and nature of the offence. A biopolitical economy is emerging that expresses a lower tolerability for diversionary sanctions and the necessity for widespread risk screening that legitimates targeted criminogenic needs and intervening into the lives of children as early as possible by implementing offender programs.

The concepts of diversion and prevention are now fused with the taken-for-granted idea that addressing the complex needs of children and young people must seek to reduce criminogenic

needs as a core priority. These "diversionary" measures expose vulnerable young people to this criminogenic conception, as well as holding them accountable for a form of prudential self-management that activates neo-liberal relations of capacitation, disabling forms of mobile confinement, and imposing expectations and pressures that are difficult to meet given their developmental status and the chronic life conditions they experience. NSW Government has over-invested in YOT as its key diversionary measure, largely ignoring the cultural needs of First Nations children and young people and the principle of self-determination in First Nations communities. As detailed in Chapter Seven, faith in this offender program is undermined by a recent evaluation that found that there were no significant differences in recidivism levels between young people who participated in YOT and a control group (Klauzner et al., 2020: 18).

Not only has the biopolitics of youth diversion become restructured by the imperative to combat criminogenic needs as a precautionary measure, but the collective conception of diversion has become so generalised over the past decade that it now refers to any form of diversion from any part of the youth justice system. This maintains young people's location in the system in intrusive and punitive ways even though the aim is to prevent them from moving any further into it. More recent innovations, purportedly designed to reduce the over-representation of First Nations young people in youth justice and to address the care-criminalisation of children in out-of-home-care (OOHC), use hybrid justice/welfare interventions as "wraparound services" when a young person enters into youth detention on remand or appears at the Children's Court. These programs reproduce the operational logic of the YLS/CMI by treating child abuse and trauma or the traumatic and harmful effects of settler colonialism as if they were responsivity factors that warrant the need for further assessment and specialised intervention in addition to the already intense delivery of risk prevention programs.

As I have argued in Chapters Two and Seven, the inclusion of an extensive checklist of responsivity practices is a control strategy for neutralising offender and practitioner resistance and optimising the reduction of re-offending. Both the instrument and the wraparound program treat trauma or cultural difference as an individual deficit or a problem of the individual's adaptation to the dominant cultural norms, which are taken-for-granted and for which they are held responsible for changing. Working together the risk codes and responsivity checklist constitute First Nations young people as intrinsically criminogenic and, at best, treat Indigeneity as a dynamic risk factor that can help in combatting recidivism through the completion of a culturally appropriate offender program (Martell et al., 2011: 241). The Youth Koori Court and pilot programs that have been developed to provide therapeutic and other "holistic" services for young people while they are or bail or who appear at court use the logic of wraparound incarceration (Flores, 2016: 7). These programs initiate an extensive and ongoing assessment that straddles the assessment of criminogenic needs and other complex needs, placing

vulnerable young people in a captive position in relation to the state's carceral power prior to a determination of guilt deploying the same logic I have described earlier in relation to Youth Justice's actuarial remand policy in a way that is far more intensive, straddling the welfare-youth justice apparatuses.

Taken together, the more recent offender-based wraparound programs, along with youth detention, post-release offender programs, community-based orders, and early intervention diversionary programs like YOT have established a vast anticipatory actuarial formation that uses legal and extra-legal security mechanisms to regulate the apprehended risky movements of young people. At the "shallow-end" of the system, a lowered threshold of tolerability for diversionary sanctions has been implemented to impose offender-focused programs on young people who have had limited contact with the youth justice system. When young people appear at the Children's Court or are placed on remand, there is a presumption that they will become a member of the state-controlled youth offender population (or they are returning to the system) and are far more frequently risk assessed and risk managed in ways analogous to intensive probation. Upon exit from the system, attempts are made to maintain their involvement in offender programs under the presumption that they remain a threat to community safety. A vast amount of energy is concentrated on maintaining their location in the youth justice system rather than getting them out of it. They remain overexposed to a criminal identification, while their vulnerabilities are undermined because of the continued focus on criminogenic needs and individual responsibility.

C.3 THE LIMITS OF TECHNICAL INDIVIDUALISATION

Simondon's account of concretisation helps us to gain a greater appreciation of the YLS/CMI's reality of being – its threshold of functioning – as a stage in a more general process of technological evolution. My research indicates that the collective Youth Justice NSW milieu has become increasingly operationalised by a mode of homeostatic regulation that imposes and attempts to preserve the YLS/CMI's capacity to concretise a predictable and standardised mode of regulation. Subsequently there is a more automatic activation between sites, less friction in action and communication, and a more effective regulatory transition between key governmental switch-points. Yet, this self-regulation does not foreclose the possibility for change and innovation. The technical system's already given mode of operation is always in excess of itself/greater than unity; its concretisation or appearance at a certain moment does not exhaust its potentials and the capacity for further transformation (Simondon, 2017: 168-169). Simondon makes a distinction between a system's "stable equilibrium" and its "metastable equilibrium" (2017: 177). The willed maintenance of a stable equilibrium significantly limits the possibilities for change. In contrast, a metastable equilibrium is analogous with the

oversaturation of an individualising system given incompatibilities in the technical object and its relations with its associated milieu that render it open to change by discovering new modes of compatibility between the technical object and pre-individual potential. Simondon (2017: 177) contends that "the discovery of a structure is indeed at the very least a provisional resolution of incompatibilities, but it is not the destruction of potentials; the system continues to live and evolve; it is not degraded by the emergence of a structure; it remains under tension and capable of modifying itself".

Over the 20-year period examined, the YLS-CMI's line of technical individualisation has not demonstrated any significant modification in its elementary structure of operations. Using Simondon's criterion, there have been no "essential, discontinuous improvements" in its "internal schema" whereby it has been "modified in leaps rather than following a continuous line" (2017: 43). The modifications effected in relation to the operations of the YLS/CMI and its associated milieu have been along a path of minor improvements that either use defence mechanisms to "diminish the nocuous consequences of residual antagonisms" (2017: 42) or that seek to install amplifying mechanisms to achieve greater control of the pre-existing codes of the instrument and the relations they establish across its domains of operation. I have considered three lines of human mediation where those who take responsibility for regulating the operations of actuarial regimes have sought to improve actuarial risk case management in one way or another to arrive at this conclusion. Firstly, the use of meta-analytic techniques to modulate claims about an instrument's predictive accuracy or other operational concerns that might propagate new lines of perception and action. Secondly, the developers' (of the LSI family of instruments) modification of their instruments. Thirdly, BOCSAR's evaluative research that helped establish risk screening in youth diversion, legitimating the deployment of actuarial case management in diversionary schemes.

An ethos of the predictive endeavour incorporates the norm that human operators will continue to modify the selection of risk variables concretised in prediction instruments based on individualising exploratory anticipatory pattern analyses. Over time the multiplication of this line of exploratory research has the capacity to establish technical thresholds of differential information that constitute evolving conceptions of risk and its operationalisation. The developers of the LSI instruments have not modified the risk items assembled considering challenges about their possible biases in relation to gender, race, and socioeconomic inequalities. This is a self-imposed limit given their insistence that the best predictors of recidivism are adequately explained through the prism of Andrew and Bonta's essentialist psychological theory about offenders' anti-social propensity and their model of cognitive social learning. This has short-circuited their own experimental research, where they have

concentrated energies on meta-analytic research aimed at validating the dynamic risk domains of their instrument in terms of their capacity to reduce the rate of recidivism.

In the face of questions about the predictive accuracy of instruments like the YLS/CMI and challenges in the wider circuits of criminal justice, meta-analyses have become a key technical mechanism of evaluation. I contend that many of these discursive challenges about actuarial instruments are of a different order of magnitude with the technical operations that are used to mediate these conflicts whereby the relations of gender or race are exclusively treated as technical variables. Meta-analyses function as a technique for normalising divergent data whereby difference is effaced by a generalised regression to the mean. As demonstrated in meta-analyses about gender, it can be concluded that meta-analyses regulate the global networks of actuarial risk assessment and risk management operating as a homeostatic force because of the inheritance of a past conditioning and its built-in constraints rather than fostering change. As the deployment of the YLS/CMI multiplies across local jurisdictions so do the number of evaluations about its operations. Without sufficient data experimentation to establish new values and about gendered difference (or any other criterion of concern), the sheer volume of aggregate data produced by studies generated in relation to the YLS/CMI or any other LSI instrument will limit the possibilities for a data-driven challenges to its authority as well as limit the psychic tension that might propel technical individualisation further in a quest to resolve conflicts that are harboured in the wider collective milieu that coalesces around youth justice.

BOCSAR has been tasked with an auditing role in evaluating Youth Justice's performance in reducing the level of youth recidivism in NSW. This univocal biopolitical concern aligns with successive state plans that have remained committed to this strategic biopolitical priority at least since 2005. The operationalisation of this valued outcome criterion into all evaluative research conducted in relation to youth justice interventions has undermined confidence in the capacity of youth diversion to effectively reduce re-offending, amplifying the norms and values established in the YLS/CMI, which have been interpolated into diversion. The gradient of perception that intensified over the first decade of the 2000s by this group of researchers can be understood as a co-individuating force between the group-action of BOCSAR's researchers and the wider collective milieu that established polarising relations with the existing legislative principles of youth diversion. The line of technical individualisation that was pursued by these researchers, focused on developing risk screening estimation models, did not open the collective field to transformative resolutions to these conflicts. Instead, the line of movement moved towards a convergence with the established objectives and already-arrived-at solutions available in relation to actuarial risk assessment and case management.

The state of tension that has arisen in relation to diversion has germinated a more widespread collective affective state that retains a sense of belonging to already established practices, beliefs, and affectional states that have invested in combatting criminogenic needs. Thus, despite the youth justice milieu being supersaturated, or greater than this actuarial individualising unity, Youth Justice's capacity to phase-shift has become prematurely foreclosed because of a research and political economy that seeks to establish homeostatic relations even through there are persistent tensions in youth justice that ethically call for novel responses. Networked actuarial control enables audits of the overall operations of the system and its sub-domains as a feedback mechanism for reconfiguring practice in greater alignment with programmed objectives. The ongoing actuarial structuration of Youth Justice corresponds with an energetic state that significantly curtails the informational potential for further transformations in its regime of functioning. When the productivity of the juvenile justice system is founded on a single measure of output such as recidivism per unit of input, it operates as a closed system "that tends towards entropy […] and thus to the exhaustion of the internal energetic resources of the system (Bardin and Carrozzini, 2016: 1). If only one objective concretisation is considered, Simondon (2010: 230) argued that there are no alternate criteria that would assist in distinguishing between one system of concretisation and another to evaluate progress. Given this level of reductivism, he contends that technical-human evolution has a limited timespan that functions like a sigmoid curve. The sigmoid, or S-shaped, curve charts a possible trajectory of a system: there is a period of experimentation and learning, then a time of growth and development, and eventually a decline downwards without a transformation in its operative structure (Handy, 1995).

I contend that the technical mediation of the YLS/CMI currently runs the risk of technical and strategic stagnation in policy and practice because the human mediators of actuarial operations seek to impose a finality of outcome over the entire Youth Justice milieu to achieve a convergence of optimal actuarial functioning. This expresses a technocratic mentality where progress is grasped "as a movement that manifests itself through its results" rather than a relation of perpetuated invention that advances the collective ensemble of technical operations in ways that are "valid for a large number of people that would be coextensive with humanity" (Simondon, 2017: 132). The human mediators of actuarial ensembles continue to stand above the technical object and effort is concentrated on improving the operations of a technical element without qualitatively altering its overall regime of functioning or by trying to realise a predetermined result across the technical ensemble. Simondon (2017: 141) characterises technocratic control as being propelled by an "unbridled will to conquer", a kind of autocratic orientation that is associated with a phase of technical individualisation in its "ascending phase

of success or conquest". Here we can see the way in which the technical object becomes "a slave whose purpose is to make other slaves", thus exercising a technical form of violence.

In Chapter Two I described the developers of the LSI instruments' ambition to establish a system-wide, data-driven automated infrastructure modulated by their "fourth generation" instruments. Clearly such a vision of governmental control does not have the capacity for complete automation as the network of relations established is reliant upon humans who work across a network of settings. There are delays in communication between network centres because of the reliance upon human labour in the calculation, recording, and transmission of risk information that prevents the kinds of pre-emptive automated systems that operate in real time that are so prevalent now. The logic behind such a level of governmental control is cybernetic in its logics. The LS/CMI anticipatory data-driven infrastructure has the capacity to actively program the entire network modulating a more continuous and synchronous mode of actuarial risk assessment and case management that can be recalibrated over time to achieve pre-established outcomes in the light of feedback mechanisms. This enables a higher degree of consistency of aggregate risk management over the course of an offender's intake through to case closure, in the transfer of cases across penal settings, and in maintaining a state of preparedness for anticipatory lines of preventive action by stockpiling risk information that can be relayed across the "long past" of an offender's involvement in the criminal justice system.

A vision of total actuarial control moves closer to realising Feeley's (2006: 231-232) claim that actuarial risk management will establish a "unified actuarial 'system'" that spans through all criminal justice processes from pre-trial detention to post-sentencing risk management. I contend that when criminal justice administrators accept this system-wide mode of operation, the conditions of possibility are established for the automation of the criminal justice system. Now, at least in NSW, the institutional barriers between Youth Justice, adult corrections, policing, and the courts are an impediment to this level of cybernetic control, leaving the criminal justice system suspended somewhere between backwards-looking and forwards-looking modes of operation.

C.4 THE LIMITS OF THE THESIS AND FUTURE RESEARCH

My account of the technical individualisation of risk case management has not yielded evidence of an evolution in actuarial risk management, but rather, its amplification and normalisation across the operational domains of Youth Justice NSW. I contend that this failure to mediate the conflictual forces that emanate from the Youth Justice milieu in inventive ways is maladaptive as it extends these tensions indefinitely into the future to the detriment of the lives of young people. The over-investment in the anticipatory calculation and management of risk using the

YLS/CMI has significantly curtailed new thresholds of functioning. Furthermore, I have demonstrated that the propagation of actuarial risk management into youth diversion maintains, if not deepens, young people's involvement in the criminal justice system, employing a logic of wraparound incarceration that embraces actuarial risk case management and that contributes to their long-term debilitation.

I reiterate that my conclusions must be qualified by acknowledging that my findings are founded exclusively on archival and documentary sources. There is a need for future research that examines youth justice practice in conjunction with archival research by incorporating qualitative research methods, most ideally using ethnographic research or some other participatory method. Moreover, it is important to incorporate the voices and experiences of children and young people in this research. In broad terms this research needs to be informed by an open-ended stance that youth justice practice is partially shaped by practitioner resistance and avoidance of policy norms as well as the internalisation and ethical commitment to actuarial norms in risk case management (see Phillips, 2017: 210). This research needs to ensure that a research methodology is used that does not afford analytical privilege exclusively to the agency of the technical object nor to human agents. Instead, a mode of analysis is needed that can interrogate the emergent properties of co-constitutive technical-human relations. Simondon's understanding of the operations of individuation and his account of transduction across operative domains and operative processes provides a productive toolkit for undertaking this analysis. This research needs to be undertaken over a sufficient interval of time to make more visible the sources of tension that are evident in the associated milieu and how these conflicts are resolved (if at all), and to trace the co-evolution of the Youth Justice technical ensemble to critically evaluate its ongoing technical individualisation.

In addition, I have not considered research strategies that might advance new possibilities for responding to young people's precarious lives, although I consider this as an ethical priority. Following Simondon, the milieu in which this work can be undertaken "occurs in an open system capable of inventing new values [and norms]" (Bardin and Carrozzini, 2016: 2). Simondon (2020: 269) evokes a technical ethics founded on the discovery of the "informational potential of a situation" given the relational tensions that are present in the wider collective milieu that conflict with the YLS/CMI's regime of functioning (Simondon, 2020: 269). A singular perceptual gradient cannot be imposed on any dynamic operative process that brings a new threshold of concretisation into being. To do so wards off or defends the current system from alternate perceptual gradients and the discovery of preindividual potential, confining action and thought to a repetitive line of movement.

The kind of technical mentality and activity that Simondon advocates exceeds a narrow focus on optimising the capabilities of a single technical object like the YLS/CMI given its existing values and norms of operation to incorporate tensions that emanate from wider social concerns as well as any specific technical object's relations with other technical beings (2017: 17-19). When considered at this broader level, Simondon (2017: 21) contends that the quantity and quality of information increases organisation and limits the degradation of energy, increasing the possibility of establishing a bridge between technology and culture that can propagate new values through a co-individuating or transindividual techno-social system (Bardin and Carozzini, 2016: 4). In this way technicity can alter relations within the collective milieu provoking new processes of psycho-social individuation including ways of thinking, affective tendencies, and ethical values and norms (Lapworth, 2020: 109-110; Simondon, 2015: 19). The kind of technical mentality that Simondon (2012: 13) proposes is defined on the ethical criterion "of the opening", where "a technical reality is open, if its own processes of concretisation can be continued […] founded on an open and modifiable normative regime (Bardin and Carozzini, 2016: 5).

If an evidence-based criminal justice environment is to be consistent with its mode of operation, it needs to function within "an economy of metastable functioning" that continues its evolution (2016: 1). It is within the frame of "permanent change within technical and socio-political structures that technical thought and socio-political thought can coincide" and where reciprocal tensions can be resolved (Simondon, 2017: 237). In Simondon's (2020: 373-380) conception, ethical norms of conduct are conditioned by the "internal resonance of [an individuating operation between two different dimensions of reality]" that can "effectuate itself fractionally by way of successive constitutions of metastable equilibria". He distinguishes between norms that are "the lines of internal coherence of each of these equilibria" and values as the informational "sense" of the operative process that guides the individuation (2020: 375). These values emerge in the informational passage that provides each successive individuation its direction and meaning. They effectuate new potentials that provide "continuity to the discontinuous trajectory of metastable equilibriums" that become altered "in the course of the evolution of norms as systems enter into new relations (Landes, 2014: 159). Given the limits in the technical individualisation that I have identified in this thesis, I hope that my conceptualisation of technical individualisation will contribute to collective effort to concretise new values and norms within Youth Justice.

Taken in conjunction with Simondon's (2017: 17-21) account of the role of the human interpreters of technical objects as being their permanent organiser, a new kind of technical subject (i.e. the mechanologist or informational technician) is required that lives amongst "a society of technical objects" and who sustains an inventive consciousness for recoding technical objects and their mode of functioning, thus facilitating the co-individuation of new ethical values

(see Bardin and Carrozzini, 2016: 6; Lapworth, 2020: 116, 120-121). They operate as mediators between the differential normativities of culture and technology, amplifying communication between these different milieus. To enact this function, Simondon (2012b: 9-10) envisages that they voluntarily participate in a reflexive "thought-network" having the capacity to reduce the distance between the divergent actors in the technical ensemble (the inventor, the manufacturer of machines, the governor of technical apparatuses, those who operate them, and those affected by its operations) to mediate the ongoing individualisation of the network in a more democratic and open-ended manner.

The kind of project envisaged here might not be possible within the youth justice milieu given the various legal, institutional, technical, and political constraints on what a technical apparatus can do and become (Lapworth, 2020: 114). If initially undertaken outside or on the margins of the existing actuarial apparatus (ideally with the participation of those inside the juvenile justice system, including young people) new values and constitutive norms for rehabilitating and integrating young people in conflict with the law can begin to emerge and enter relations within the pre-existing operations of evidence-based youth justice. It must be stressed that this transindividual individualisation needs to establish a mode of communication or individuating informational resonance that "takes on an intensive […] meaning at the level of various gradients" (Simondon, 2020: 268). This cannot be achieved by imposing a new structure and its values on the pre-existing structure, but rather, by resolving the tension between differing and incompatible operating domains founded upon the creation of a novel signification that overcomes a disparation in the elements of being. In an evidence-based milieu this co-individuation would be conducted as an experimental data practice to discover new function-finding operations that are harboured within heterogenous relations and the different functions that traverse the data of concern (Mackenzie, 2017: 84-85).

APPENDIX ONE: YOUTH LEVEL OF SERVICE/CASE MANAGEMENT INVENTORY – AUSTRALIAN ADAPTATION (YLS/CMI – AA) GUIDE

YOUTH LEVEL OF SERVICE/CASE MANAGEMENT INVENTORY – AUSTRALIAN ADAPTATION (YLS/CMI-AA) GUIDE

(Parts 1- 4)

Parts 3 and 4 of the YLS/CMI 2.0 and User's Manual (R.D. Hoge & D.A. Andrews) were incorporated into the JJNSW version of the YLS/CMI-AA by Juvenile Justice Operations Unit in 2014. Part 2 was also updated in 2014 to include a 4-tiered scoring system (low, medium, medium high and high) with updated cut-off scores – as outlined in this guide. Minor changes were made to the explanatory text for items in Part 1 of the original YLS/CMI-AA adapted by Anthony P. Thompson. The intent of these changes was to provide greater clarification for the user in when to and when not to tick each item.

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Part 1 – YLS/CMI-AA

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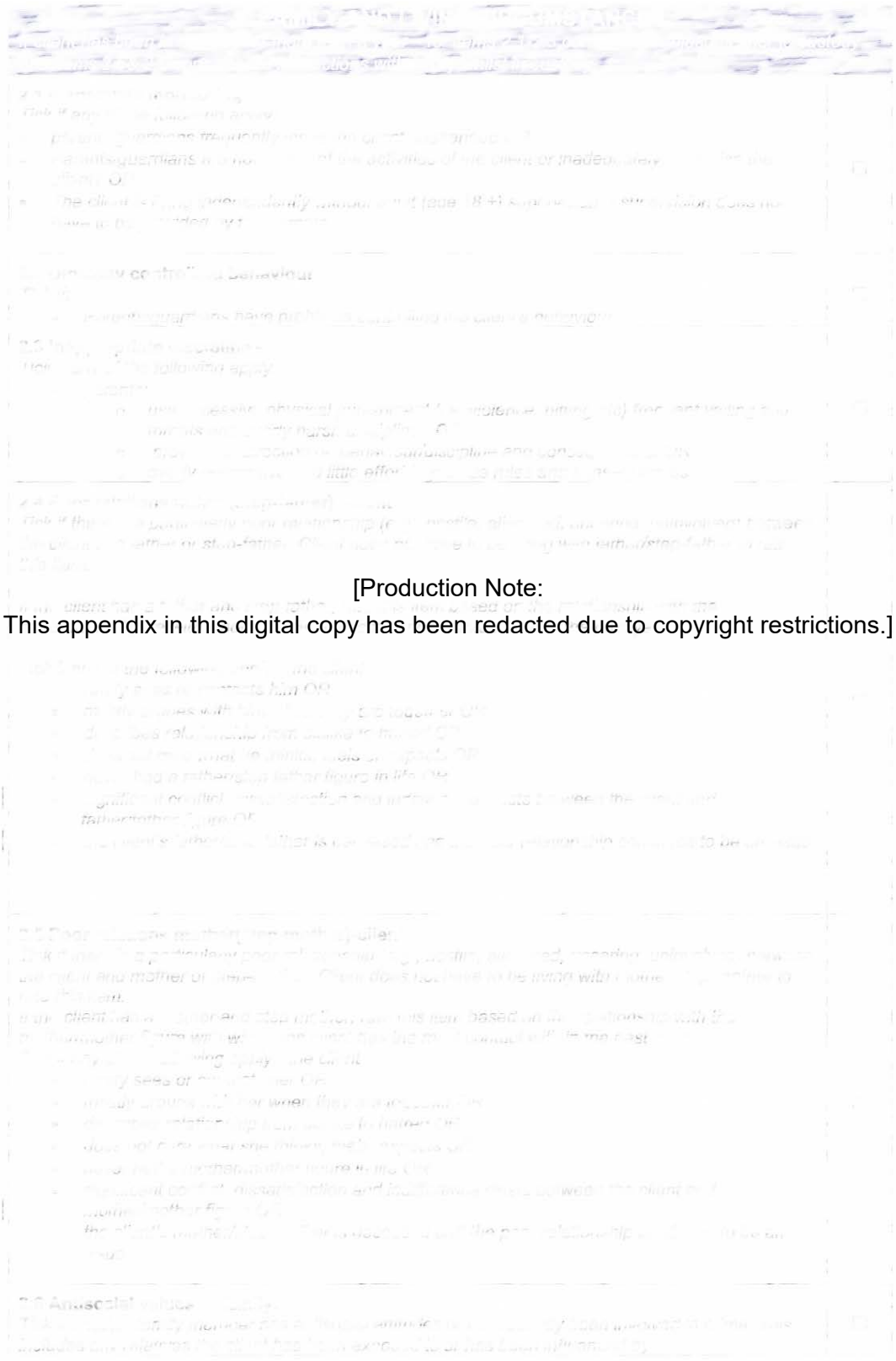

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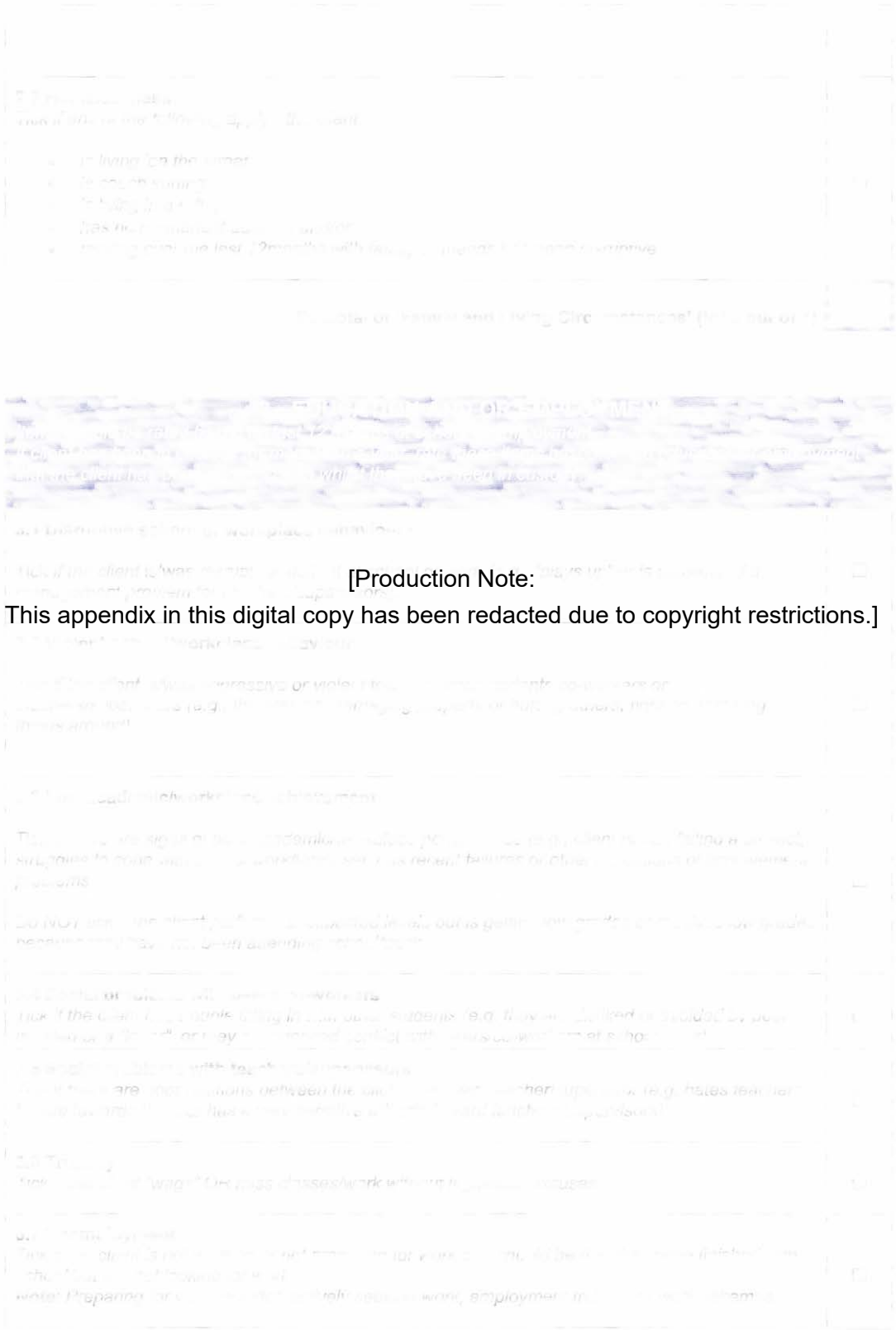

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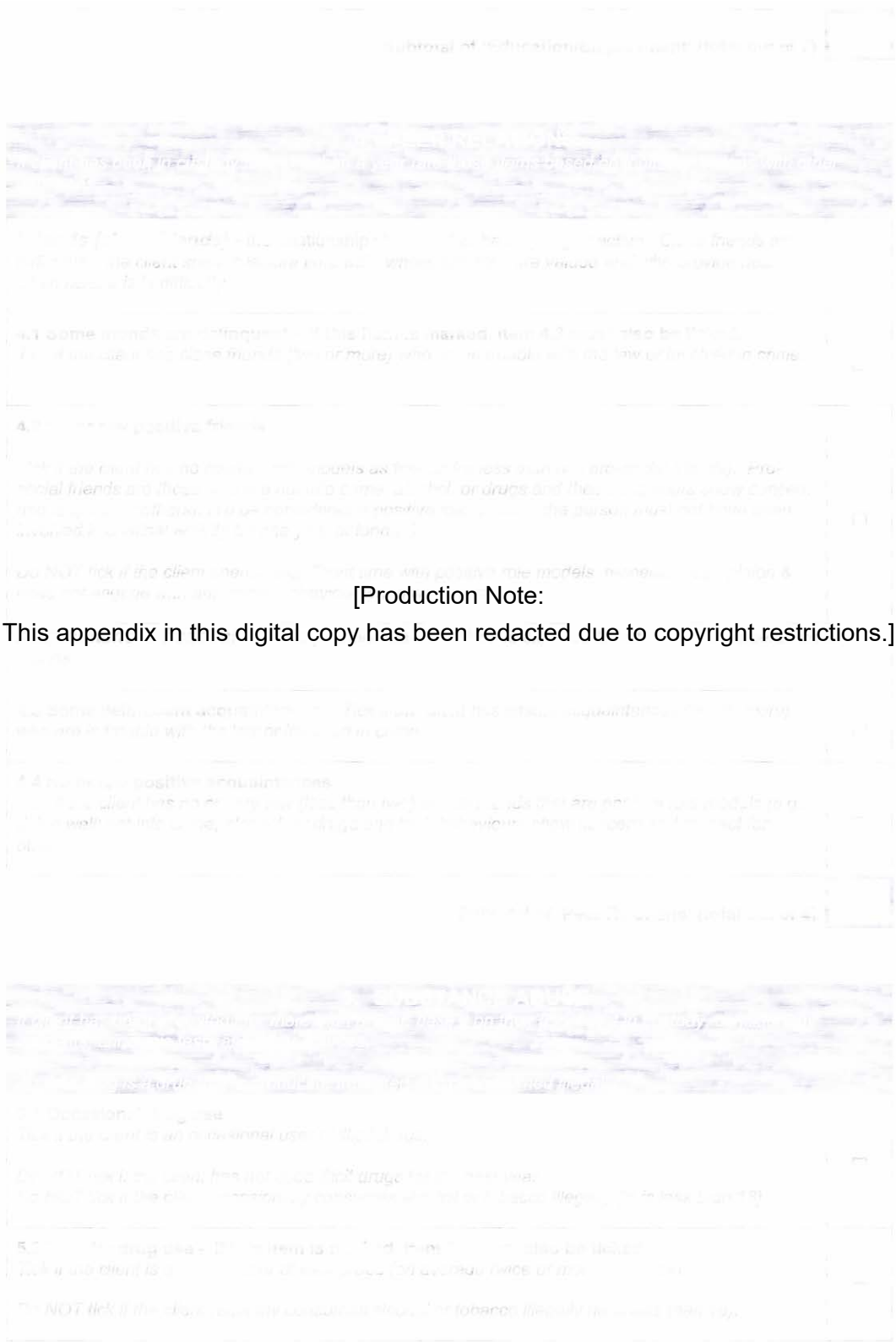

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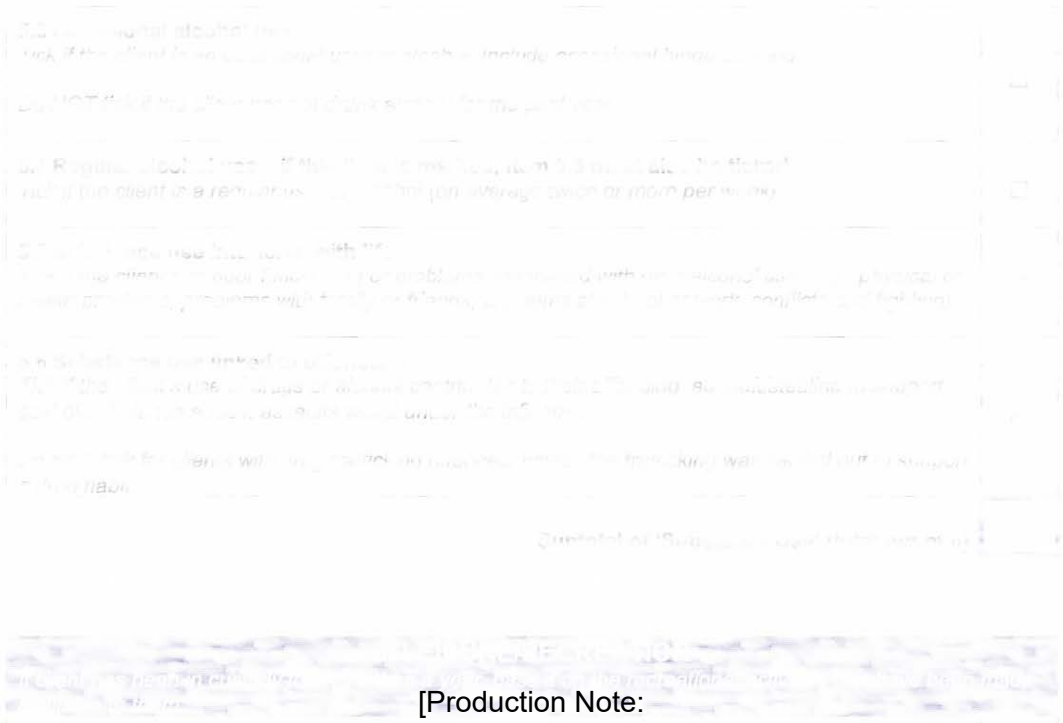

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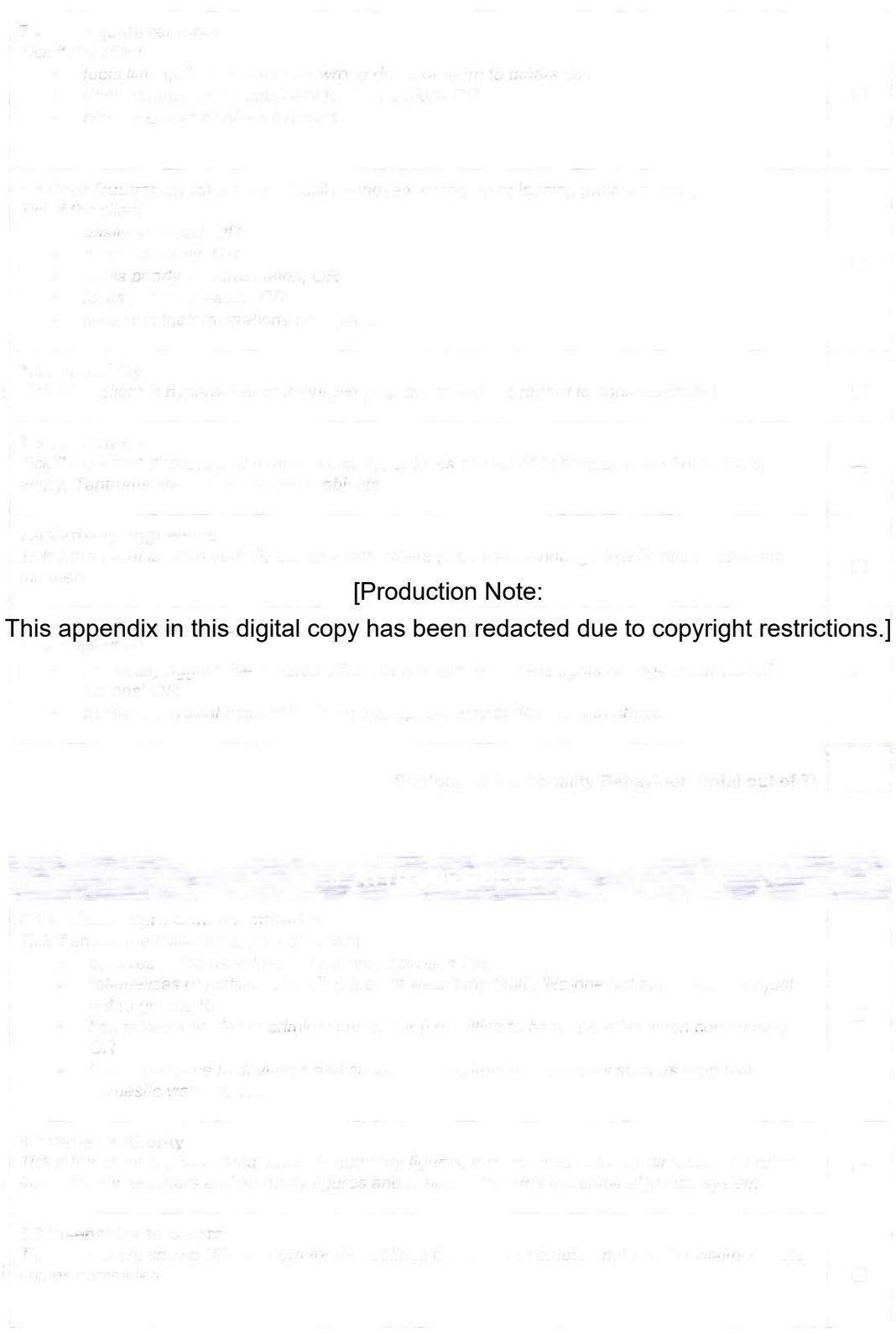

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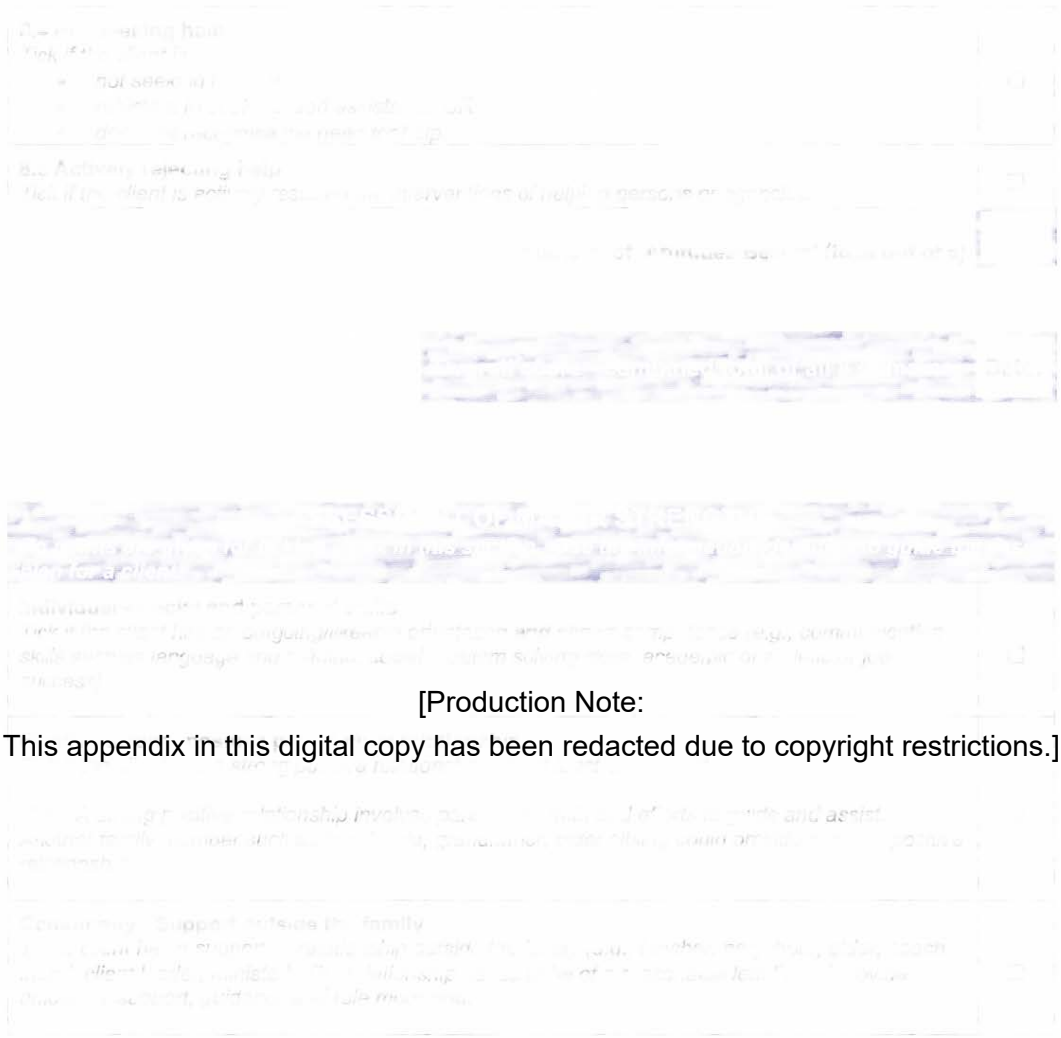

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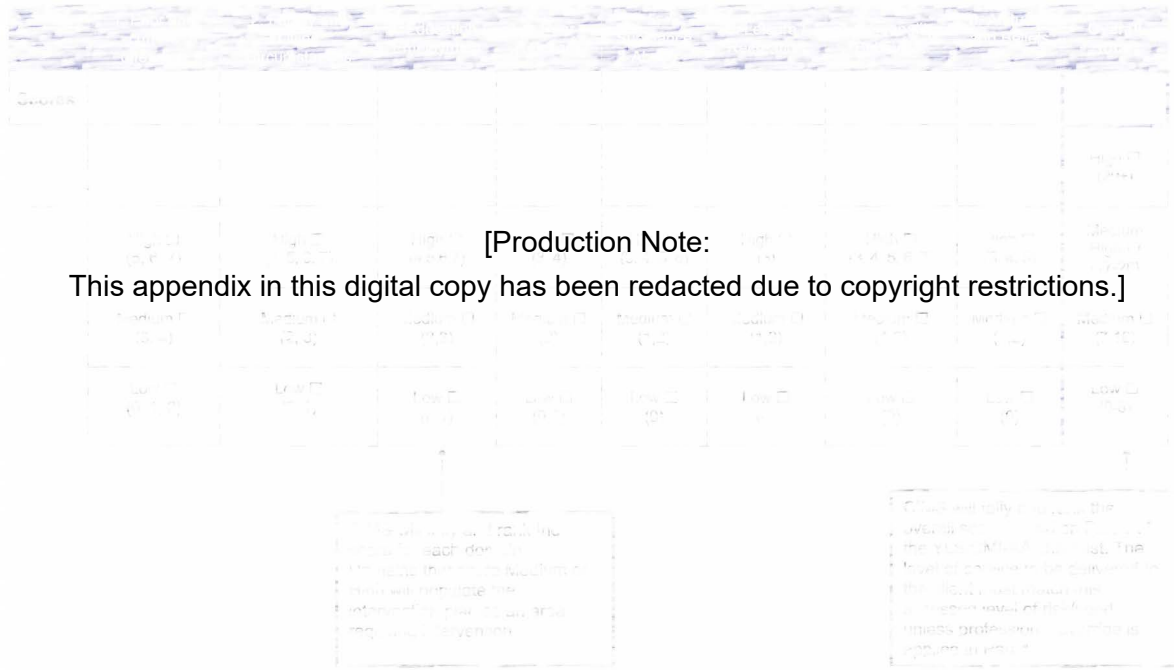
PART 2 – Summary of identified Risks/Needs



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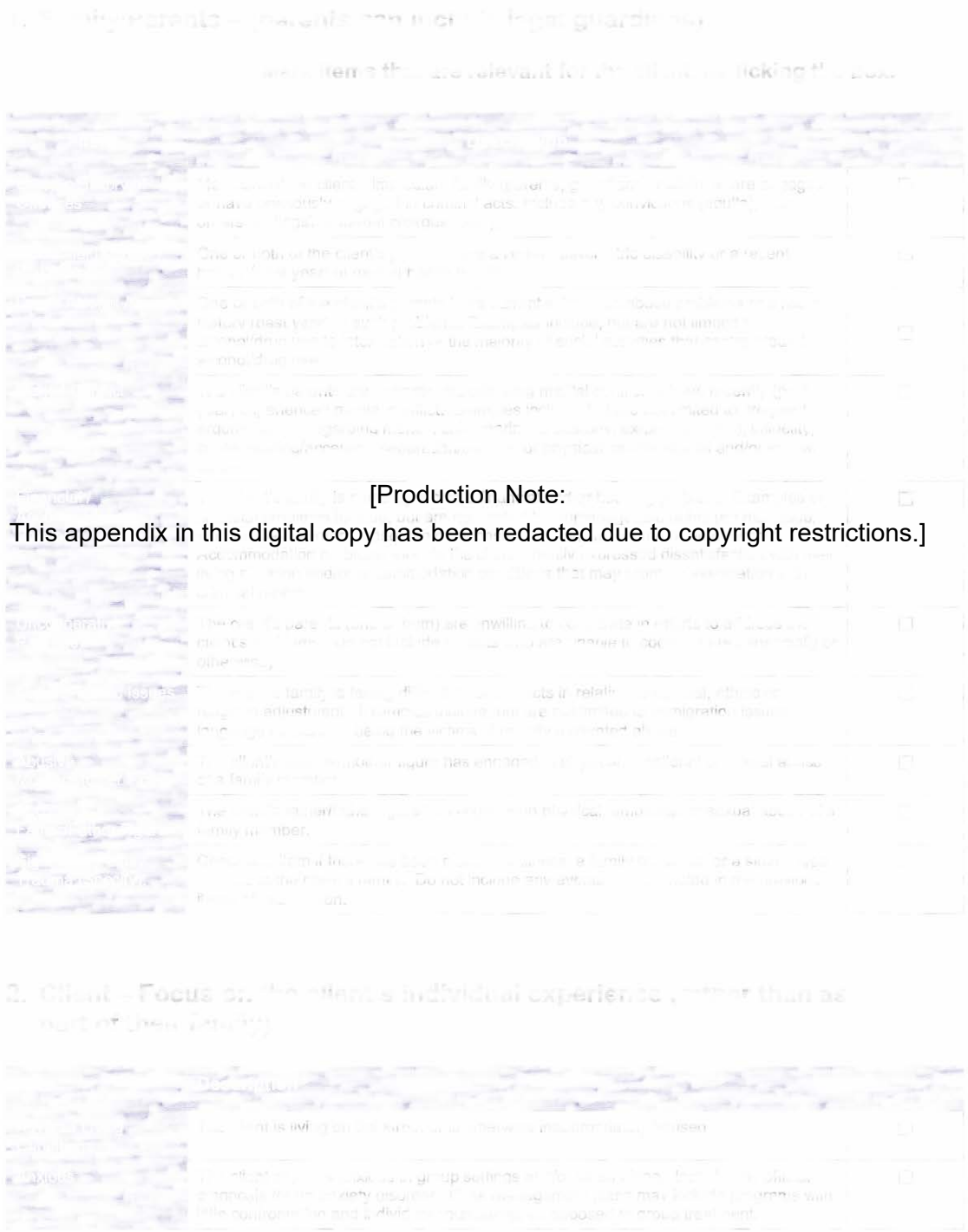
PART 3 – Responsivity checklist



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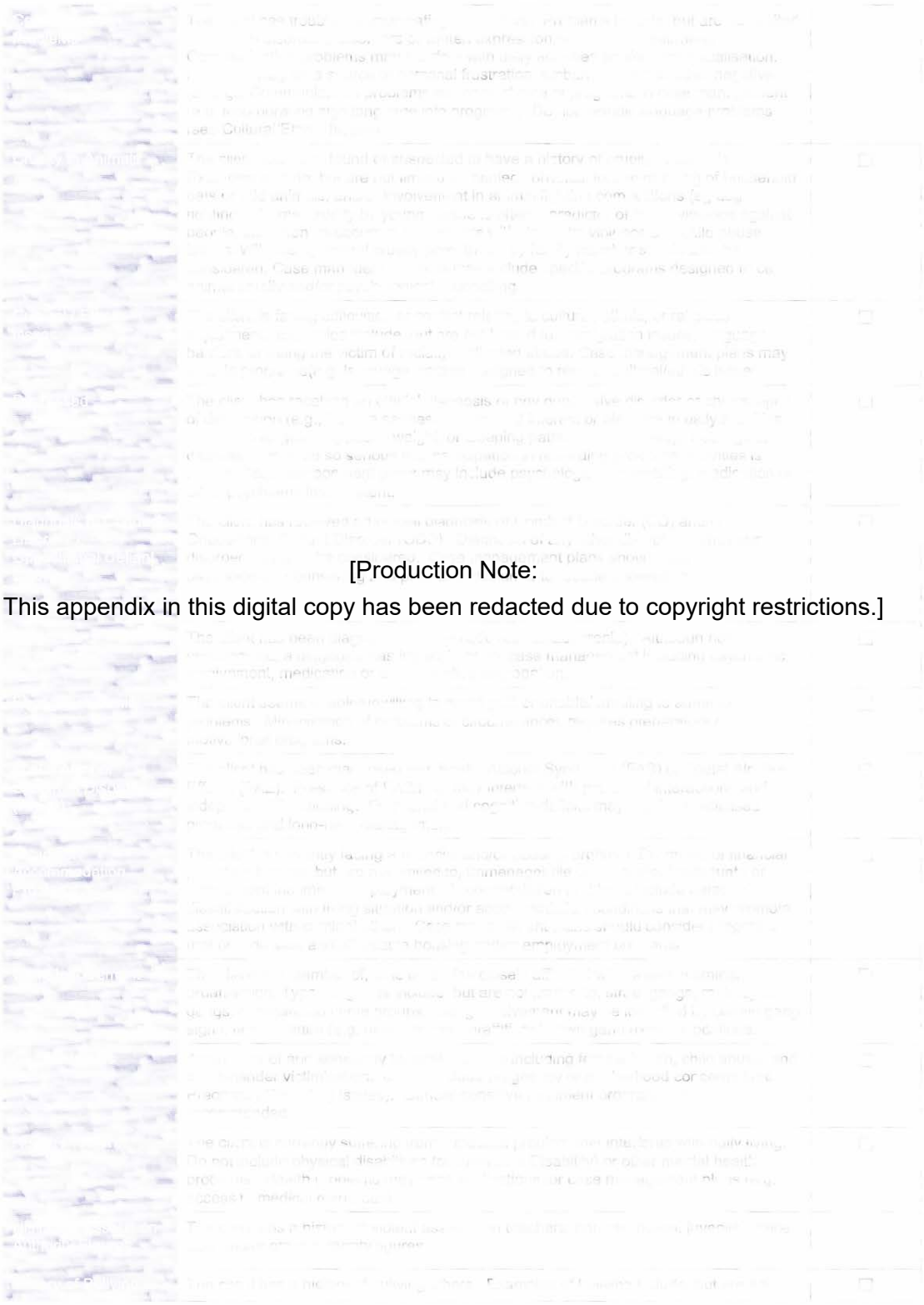

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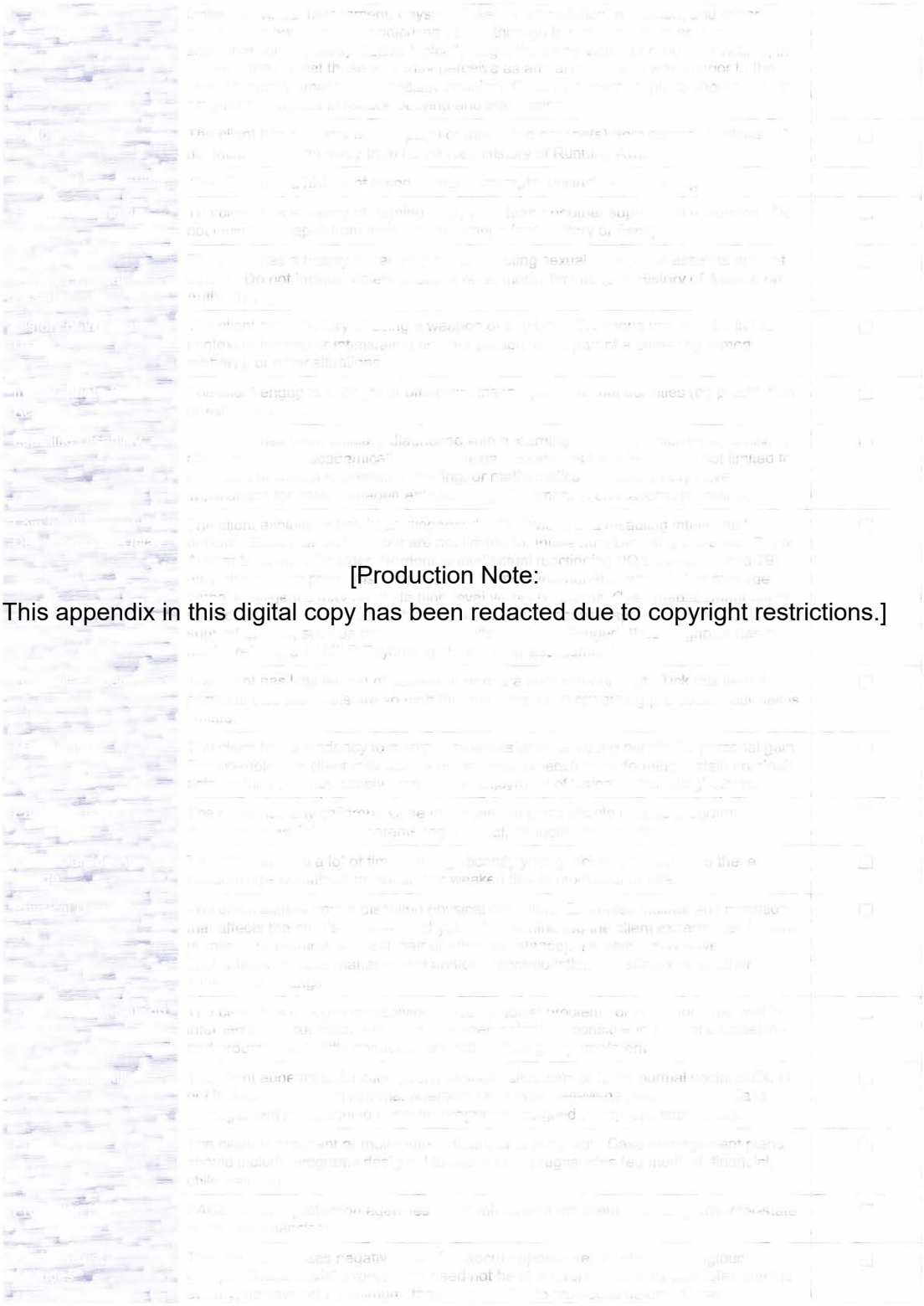

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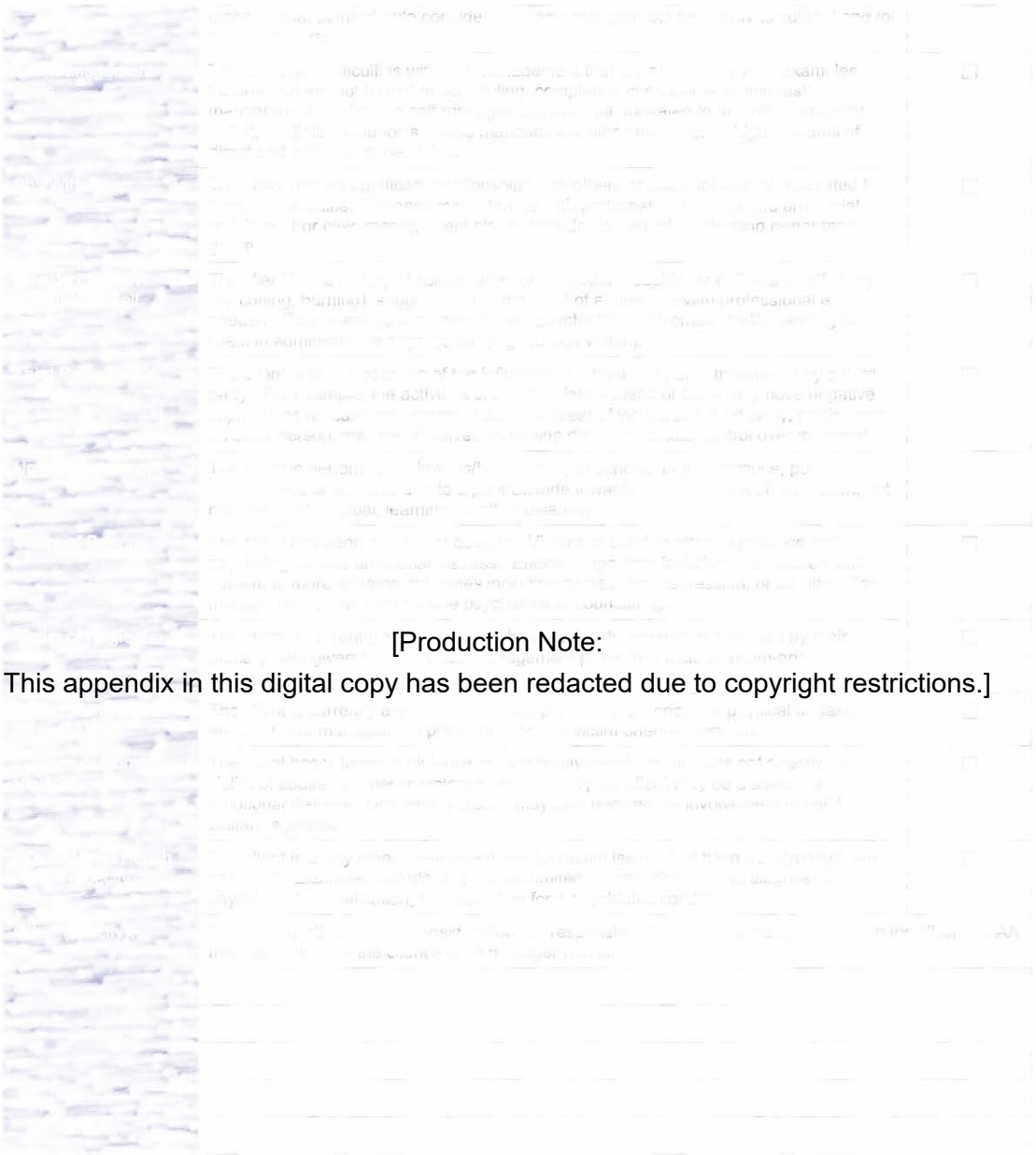

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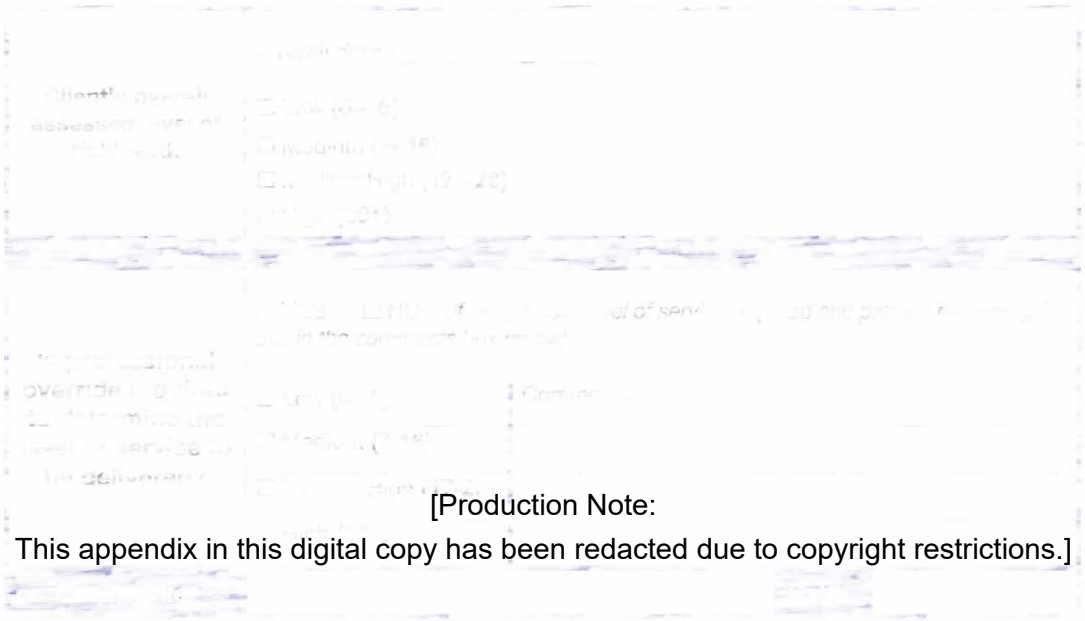
PART 4 – Professional override of level of service to be delivered



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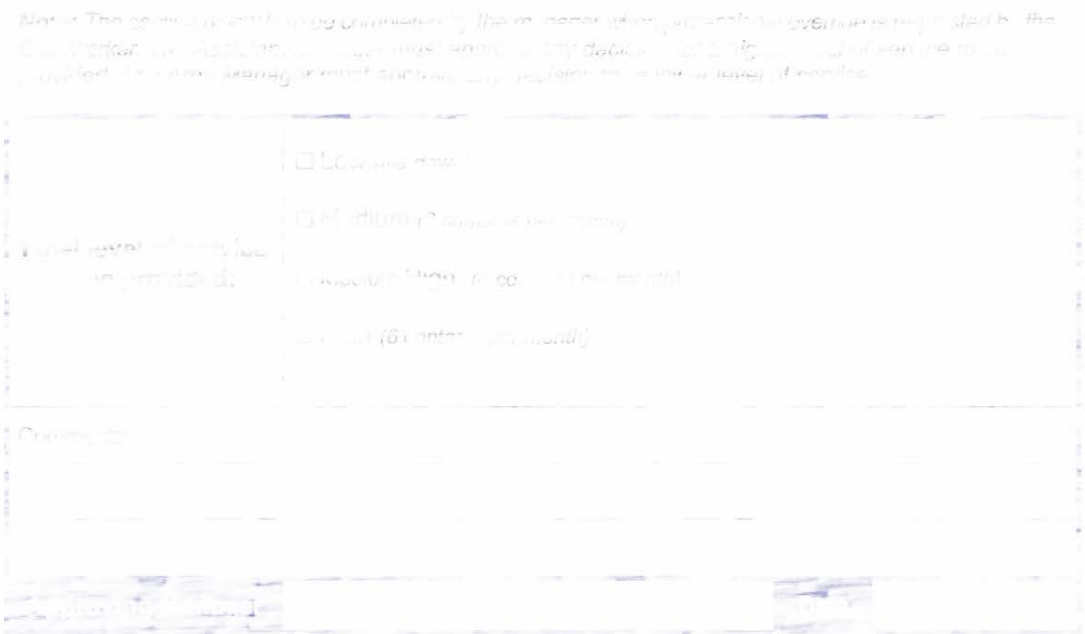

APPENDIX TWO: PROFILE FOR THE YOUTH LEVEL OF SERVICE/CASE MANAGEMENT INVENTORY – AUSTRALIAN ADAPTATION

Profile for the Youth Level of Service/ Case Management Inventory - Australian Adaptation[1]

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Youth Level of Service/ Case Management Information Summary

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NOTES

Introduction

[1] Feeley and Simon (1994: 177) characterise actuarial justice as a form of power that targets the "population itself, in its biological and demographic sense". Without defining "power", they characterise the risk management of categories according to their location within a distributed risk population as a kind of "governmentality" aimed at reducing the crime rate. In their diagnosis, power no longer seeks to respond to past offences but uses "techniques […] aimed at preventing future offences" (1994: 178, 197 *fn*7).

[2] In Foucault's account, governmentality refers to the governmentalisation of the state, a trajectory that began in the 18th century and that steadily led to pre-eminence over other forms of power in the 20th century and that has resulted in the formation of specific governmental apparatuses and a complex of associated knowledges (1991: 102-103).

[3] As a form of techno-scientific knowledge of political economy, statistics about the population make visible and calculable biopolitical information about its regularities, its rates of death, disease and crime, its cycles of scarcity and so on; they demonstrate how population has variegated "aggregate effects" that are irreducible to the family or the individual; and, they reveal how "its shifts, customs, activities […] population has specific economic effects" (Foucault, 1991: 99).

[4] Foucault contends that biopolitical power's basic function "to improve life, to prolong its duration, to improve its chances, to avoid accidents, and to compensate for failings" may justify the power to "let die" (2003: 255). Foucault (1978: 138) had originally defined biopower as the "power to foster life or disallow it to the point of death" where its two poles of operation were disciplinary power and biopolitical power. In his account of state racism, a break is introduced into the operations of biopower that separates out groups in the population, establishing a caesura within the biological continuum that divides according to "what must live and what must die" (2003: 254). This "death function" is understood not only to include murder but indirect forms of murder such as "exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection and so on" (2003: 256). This racism justifies the death-function in the economy of biopower "by appealing to the principle that the death of others makes one biologically stronger insofar as one is a member of a race or a population" (2003:258).

[5] Feeley and Simon (1992: 458) assert, "perhaps the clearest example of the new penology's method is the theory of incapacitation, which has become the predominant utilitarian model of punishment (Greenwood, 1982; Moore et al., 1984). Incapacitation promises to reduce the effects of crime in society not by altering the either offender or social context, but by rearranging the distribution of offenders in society. If the prison can do nothing else, incapacitation theory holds, it can detain offenders for a time and thus delay their resumption of criminal activity […] if such delays for enough time and for enough offenders, significant aggregate effects in crime can take place although individual destinies are only marginally altered".

[6] Feeley and Simon (1994: 189) characterise the targets of incapacitation as "inert from the point of view of influencing decision making". In their view high-risk offenders are no longer constituted as a rational choice actor that can be influenced "by the pricing system of punishments".

[7] Rose's (2000) mapping of government and control in advanced liberal societies has been influenced by Deleuze's (1992) depiction of digitalised control societies. Rose describes the circuits of control as being dispersed, flowing through "a network of open circuits that are rhizomatic and not hierarchical" (2000: 325). Rather than targeting a subject with a unique personality, control operates on "elements, capacities, potentialities" by continually monitoring and reshaping logics "imminent within all networks of practice". In circuits of inclusion the calculated modulation of conduct operates according to "principles of optimisation of benign impulses and minimisation of malign impulses" across the circuits of everyday life. This interpretation about the strategies of control is like Ericson and Haggerty's (1997: 33, 41) arguments about the police as risk knowledge professionals who use technologies for communicating about risk internally and externally to structure deliberations and actions within a network of professionals who are enlisted into the business of control by risk management.

[8] In this mode of analysis, "arrangements of relations of forces have a strategic intelligibility, and their rationality, as well as the transformation of these arrangements into other coherent arrangements" (Davidson, 2003: xix).

[9] In Deleuze's (1988: 37) exegesis of Foucault's diagrams of power he characterises discipline and biopolitical regulation as having the potential to actualise concrete assemblages of relations: "The diagram acts as a non-unifying imminent cause that is coextensive with the whole social field: the abstract machine is like the cause of the concrete assemblages that execute its relations; and these relations between forces take place 'not above' but within the very tissue of the assemblages they produce" (1988: 37).

[10] Simon and Sparkes (2013: 6) identify three key features of this body of work in the late 1960s and 1970s: it assumed that changing penal institutions were a key to understanding structural change in the wider social order, at the level of culture as well as that of policy; it adopted historical case studies to assist in analysing change; and, it focused on the prison as an institution of power and social control that had effects on both governance and the broader population.

[11] Bullock's analysis was concerned with the use of the Offender Assessment System actuarial instrument used in probation in England and Wales. In her account, practitioners' interpretation of rules and procedures and their professional values shape risk management. Practitioners retained "reformist and inclusive" values that were more concerned with transforming the individual than merely regulating risky groups (2011: 132). Analyses like this foreground the way in which practitioners subvert, resist, adapt, or reconfigure practice in hybrid ways, as well as succumb, eschew, and internalise actuarial risk management regimes. Werth (2017: 812), for example, understands parole agents as a "primary bearer of penal culture" who actively negotiate wider social forces, institutional imperatives, risk technologies, their own sense of professional authority, and multiple forms of knowledge including their own subjective and impressionistic evaluation of risk and moral judgments about personhood. These kinds of analyses tend to provide schematisations of risk practice as being hybrid rather than exclusively technocratic in character or exclusively concentrating on the regulation of levels of risk. Werth (2017: 822) views parole risk management as being "a contingent, sometimes unpredictable, assemblage that almost always continues to unfold and evolve through the period of supervision". He rejects the thesis that risk management is a structured or factorial process that de-individualises penal subjects, describing the "evaluation of risk" as being "highly individualising and impressionistic" (2017: 808). On resistance see Lynch (1998) and Werth (2017). On risk aversion see Kemshall (2001), Robinson (2003), Hannah-Moffat (2005), and Hannah-Moffat et al. (2009). On reconfiguration, adaptation, and hybridity see Lynch (2000); Kemshall (2003); Hannah-Moffat and Shaw (2001); Maurutto and Hannah-Moffat (2005); Annison et al. (2008) Hannah-Moffat et al. (2010); Deering (2011); Goddard (2012); Hardy (2014); Grant and McNeil (2014); and Robinson et al., (2013).

[12] It is difficult to generalise from these conjunctural analyses as these studies investigate local penal assemblages where the analysis may contest the institutional policy environment and not necessarily the actuarial instrument(s) being used in these penal milieus. When the actuarial instruments are included in the analysis several different instruments are considered without any consideration of the differences between these instruments. For example, Lynch's (1998) ethnography of parole discourse and practices in California in the mid-1990s does not identify the instrument used in this jurisdiction. Her account focuses on the parole agent's resistance to the "official" actuarial management system then in operation, in particular its use of a risk management data base to audit client files as a way of monitoring the parole agent's compliance with policy (1998: 848-851). She described the parole agent as experiencing competing pressures to comply with this actuarial regime and act in a risk aversive way to external pressures about public safety by avoiding decisions that might attract media attention. In her characterisation, they adopted "traditional crime-fighting techniques" that relied on pro-active detection and incapacitating high-risk offenders rather than applying the agency's actuarial risk case management policies, which they resented (1998: 851-854).

[13] Brownsword (2019: 9) argues that, driven by the imperatives of crime prevention and risk management, technological management will be the strategy of choice for public regulators in the 21st century. He suggests that this is also true for private regulators who regulate access for on-line environments.

[14] Marks et al. (2018: 714-716) have outlined some of the predominant properties of automated justice. There has been an increasing use of data mining and data profiling in predictive policing, intelligence-led policing or counterterrorism that places everyone under "categorical suspicion". There has been a

dissolution of the procedural infrastructure within the criminal justice system where the traditional law enforcement regime is reconfiguring into "an accusatory and depository regime" (Jackson, 2008: 272, cited in Marks et al., 2018: 714). By meting out cautions or fixed penalties the investigative and probative stages of criminal justice are increasingly merging. The new forensic technologies have resulted in the dissolution of the boundary between having been acquitted of a crime and the discovery of new forensic evidence. They suggest that at both the exit and entry points of the system the procedural framework of the system is increasingly being bypassed and "the distinctions between being citizen, suspect, defendant convict, and acquitted" have indistinct boundaries (2018: 714).

[15] From the stance that has been adopted in relation to "regulating technologies", it is because technical objects and infrastructures regulate our actions that there should be a certain degree of regulation by the law (Hildebrandt, 2008: 178). She asserts, "If 'regulating technologies' is indeed understood as the double challenge of sustaining a legal framework that regulates emerging technologies, while acknowledging that technologies themselves have a regulative (normative) impact of society, we need to urgently face the issue of digitalisation as a process that will regulate and constitute our lifeworld and for that very reason needs to be regulated and constituted by law. In that sense 'regulating technologies' implies mutual transformations of law and technology" (2008: 186).

[16] Deleuze (1992: 5) draws a distinction between normalisation where the discipline individualises as well as administers life by locating an individual's position within a mass and control where "there is no longer either a signature or a number, but a code: the code is a password" that modulates conduct. He continues: "Individuals have become 'dividuals', and masses, samples, data, markets, or 'banks'".

[17] This contrasts with a data scientist's view of information retrieval where legal practice is understood as patterns in the dataset (Hildebrandt, 2016: 9). Machine learning would use as a technique for mining large quantities of legal text, acting on this by predicting the outcome of a new case, processing the feedback that comes by comparing the prediction with the actual outcome, and reconfiguring the program to improve the prediction.

[18] Hildebrandt (2016: 29) defines data-driven agency as "the computational cyberphysical environment that not only observes our behaviours but also actively intervenes to pre-empt them". I would define this more broadly to refer to any probabilistic technology's agency to predict and regulate behaviour.

[19] Hildebrandt (2013: 240) has outlined how this collaboration might occur and the kinds of regulatory principles that could be established: (1) collaboration between engineers designers and users of the computing systems who will be affected; (2) an agreement that data mining operations should include multiple representations and methodologies to destabilise any monopoly on the interpretation of what these technical systems do to generate evidence-based awareness of alternative outcomes; (3) all trials should be reported as well as the impacts on individuals and groups; (4) whenever there is adverse impact there needs to be transparency about the data and the methods used; (5) there needs to be detailed and agonistic scrutiny of the results of data mining operations; and (6) the establishment of feedback to the users of the technical system and citizens more generally so that they can become active stakeholders in the technical system. See also Sculley and Pasanek's (2008: 422-423) recommendations for "best practice" in establishing standards of evidence for the use of data mining in the humanities.

[20] Hildebrandt (2016: 17) is referring to Shannon's (1948) concept of information in reference to the "(trans)formative impact of whatever informs on whatever is informed". Shannon was concerned with transferring discrete information from point A to point B, without others being able to decode this information, to ensure that the content is reproduced at B in the same way that it was sent from A (2016: 16). This mode of information transmission aims to eliminate uncertainty which reduces information to a closed cybernetic system that limits the possibilities for transformation. If the probability of a certain outcome is high, "the less informative it is, the lower the probability the more informative" (2016: 17).

[21] To be clear, machine learning and other profiling technologies are productive because of the inherent bias that informs the choice of algorithms (Hildebrandt, 2016: 25). This is "a generative process of abductive reasoning, tested by the iterative process of inductive verification and falsification" (2016: 25 see *fn* 76 in relation to Pierce 1997: 225-238). Hildebrandt (2013: 25) asserts, "once a bias is taken for granted as a mirror of reality we enter a danger zone, as it makes us blind to whatever escapes the model that has been inferred […]. The problem, therefore, is not the bias, but the hidden bias and our inability to test assumptions and the operations that nourish data-driven agency".

[22] See Milivojevic (2021: 16-35) for an overview of how actor-network theory, the technological unconscious, and the human-data-assemblage can be used to theorise and advance our understanding of how technologies such as artificial intelligence, the Internet-of-Things, blockchain, or autonomous mobile robots operate in order to grasp the complex relations between technology and humans, and the impact of human to non-human, non-human to human, and non-human to non-human relationships on one another. Milivojevic's theorisation of digital frontier technologies includes a number of criminological concepts that have been developed within the field that characterise these technologies within a broad lens of social control: ubiquitous surveillance (Lyon, 2007; Andrejevic, 2012); the surveillant assemblage (Haggerty and Ericson, 2000); modes of actuarial automated justice as evidenced in crime forecasting and predictive policing (Wilson, 2018); and, pre-crime (Zedner, 2007; McCulloch and Wilson, 2015).

[23] A great deal of this research seeks to identify the limitations of risk-focused research and the contingencies of its purported "evidence-based" modes of assessment and intervention (see especially Case and Haines, 2009) and/or identify its failings in addressing the needs and rights of young people and exacerbating their location and entrenchment in the criminal justice system, including the ways in which this contributes to gender, racial, socioeconomic and cultural disparities.

[24] An operation can be defined by its capacity to convert operation into structure and structure into operation to bring "the transformation of one structure into another structure" (Simondon, 2020: 666). This operation occurs in the "middle ground" between two structures defined by the communicative "rapport" that is established between these structures that possesses an identity that is different from these structures. This transformative operation involves two relational half-chains, a demodulating operation that converts an existing structure into an operation given tension, supersaturation, and incompatibility in the structure, and a modulating operation that converts this emerging operation into the next structure.

[25] If analogical thought was used to interrogate the similarities between two different structures or beings (e.g., nature and society, cybernetic automatic system and a social system) the modality of thought would "be merely an association of ideas" (Simondon, 2020: 668). Analogical thought is the "transfer of an operation that reproduces the operative schema of the known being". It renders visible the constitutive individuated structure or form of an individual being that arises from "the identities of rapports" between different operations rather than the relations or operations established between two already constituted structures or identities. Analogical thought provides a way of knowing founded on a dynamic intuitionism premised on the ontological supposition that the emergent properties of an individual can be known by defining structures based on their constitutive operations of a being (2020: 669).

[26] Combes (2013: 42) suggests that this method is suited to interrogating singular cases of individuation, thus complicating the task of advancing a global theory of individuation. At the same time, she acknowledges that Simondon has attempted to overcome this by proposing a paradigm for knowing the process of individuation. Simondon (2020: 663) defines his paradigm as "the theory of operations", arguing that its goal would be "to define the broad categories of operations and the different type of transformative dynamisms according that objective study reveals, and then to try to classify these dynamisms according to their intrinsic characteristics". On this basis it might become possible to theoretically arrive at a "a single fundamental operation" that includes all operations as simpler cases.

Chapter One

[1] Schmidgen (2012: 20) elaborates on Simondon's criticism here: "Machines have the status of foreign workers. We rely on them and their service, we know their names and types, but we do not learn anything more specific about them".

[2] The identification the genesis of a familial lineage of actuarial risk instrument according to its abstract schema of functioning will help to clarify some of the interpretative confusion in analyses in the field of punishment and society that often assume that all prediction instruments perform the same strategic function. The rise of actuarial instruments in criminal justice since the 1980s have predominantly been understood as a discontinuity in the mode of punishment, which has resulted in difficulty in how to understand the role of rehabilitation that is a component in the functional schema of some of these instruments. Rather than looking more closely at the different kinds of functional schemas evident in these instruments, analyses have characterised actuarial instruments more widely as being a form of neo-rehabilitationism (Hudson, 1987), "late-modern rehabilitation" or "punitive rehabilitation" (Robnson, 2008); "rehabilitation as a means of managing risk" (Garland, 2001 or as a hybrid form of penalty that fuses

risk and need (Hannah-Moffat, 2005), as productive and repressive power (H*ö*rnquvist, 2017) or as some other co-mingling of punishment, risk containment, crime prevention and rehabilitation (Werth, 2011).

[3] This paper was dated 1960, although it remains unclear exactly when Simondon wrote it (Bardin and Carrozinni (2016: 7 *fn*7).

[4] Simondon (2012: 4) considers that concretisation proceeds by "condensation […] by reducing the number of primitive elements to a minimum which is at the same time the optimum". See Illiadis (2015: 87-89) for an elaboration on Simondon's conceptualisation of concretisation in relation to this point).

[5] Simondon provides two examples of the mental thought that might be applied to a careful examination of the technical problem. Rather than considering Boeing aircraft that explode in flight as being "bad planes", a technical attitude would examine the behaviour of cells subject to vibrations and constraints of internal suppression to determine the zones of fatigue of metal. His second example involves the sentencing of an offender considered as being "constructed, as composed of different layers in relative solidarity to one another" (2012: 14 *fn*4).

[6] Simondon (2015: 19) contends that concretisation "provokes a transformation in the environment, which rebounds onto living species, man [sic] included". He characterises concretisation as "an act of culture […] that modifies the living species' environment, and arouses an evolutionary process".

[7] Massumi (2012: 27) considers that one of the most original aspects of Simondon's work is his attempt to "think discontinuity and continuity together". The threshold where a new "operative solidarity" is established between the elements, across the disparity of their field, is analogous to the concept of a quantum leap in physics. Masssumi (2012: 27) explains, "A quantum leap […] is non-decomposable as a movement across a threshold. But its non-decomposability takes off from one set of diverse and decomposable conditions (a collection of particles in a particular configuration) and leads to another (a collection of particles in a changed configuration). The dynamic wholeness of the quantum event (the all-or-nothingness of its occurrence) interposes itself between two diversities, whose discontinuity it marks by a change in level accompanied by a change in the defining properties of the system (a passage, for example, from one element of the periodic table to another)".

[8] Simondon (2012: 5-8) considers that there is an antagonism between the artisanal and industrial affective modalities of technical operation. An affective modality can be understood as the energetic and informational relations evident in technology's mediation of work at a particular stage of technical evolution. Simondon (2017: 247) contends that "work can be taken as an aspect of the technical operation, which is irreducible to work". In artisanal modes of operation, the craftsman uses tools to fabricate technical objects from nature using continuous schemas where the human operator is both the source of energy and the source of information (2012: 5-6). The tool is subordinated to the individual and their mastery of technique that "controls and regulates the application of learned gestures to the concrete materiality of the workable material and to the particular characteristics of the aim of the work". In industrial modes of operation, the technical object is part of a technological system, displacing the mastery of the individual and reducing humans and their tools to being part of technical system. Work coincides with a technical reality that is imposed in a predetermined form where the machine operator is a slave to the machine (2017: 248). The source of energy and information becomes split, occurring at several moments and levels over the production process. Information occurs discontinuously with the invention of the machine, then with the manufacture of the machine and its regulation, and then in its usage (2012: 7). The "division between mental and manual labour, between those who grasp the specific elements of the process, and those who grasp the overall ensemble of technology" (Read, 2016: 105) is understood by Simondon as being a source of alienation. The division of labour results in the worker being only able to grasp one part of the technical ensemble without comprehending the whole or where those who invented the machine are separated from its operation. Simondon (2012: 7) comments: "The figure of the unhappy inventor came about at the same time as that of the dehumanised worker".

[9] Simondon (2017: 150) contends that humans, as interpreters of technical objects, need to "play a functional role between machines rather than above them". They should participate in technical ensembles becoming "connected with a network of universal technics" amongst a plurality of technical ensembles (2017: 235).

[10] See Combes (2013: 70-76) for a critical exegesis of Simondon's account of humanity's alienating relation with technology.

[11] Simondon (2017b:1) insists that it is not possible to conceive of a phase without situating it in relation to another or to several other phases "taken together that is the complete reality, not each phase itself". He characterises being as a constitutive "[…] system of phases [where] there is a relation of equilibrium and of reciprocal tensions".

[12] Simondon (2020: 384 *fn*15) regards internal resonance as "the most primitive mode of communication between realities of different orders". In a resonating system, ether is a "twofold process of amplification and condensation".

[13] The tension between these disparate potentials becomes the energetic system that "it realises within it this internal resonance of matter about to take form and a mediation of different orders of magnitude" (Simondon, 2020: 32). See Simondon (2020: 32, 34) for a description of the individuation of a brick. "The principle of the individuation of the brick is neither the clay nor the mold […] (it is the) operation through which the clay, at a given moment in an energetic system that consisted of the smallest details of the mold as well as the smallest pilings of this humid earth, has taken form under a certain pressure, distributed in a certain way, diffused in a certain way, and actualised in a certain way: there has been a moment when the energy of the pressure has been distributed in all directions from each molecule to all the others, from the clay to the walls and from the walls to the clay" (2020: 32).

[14] Simondon (2020: 226) contends that "the resolving individuation is one that conserves the tensions in the equilibrium of metastability instead of nullifying them in the equilibrium of stability. Individuation makes tensions compatible, but it does not relax them; it discovers a system of structures and functions within which tensions are compatible".

[15] As Combes (2013: 26) notes, transindividual individuation does not unify the individual and society, but rather constitutes a "relation of relations" that are both interior and exterior to the individual.

[16] Simondon (2020: 330) conceives the social as "a system of relations, a system that includes a relation and sustains it". The individual is in relation with the social "through the social". This is a quite enigmatic statement that is situated outside of any substantialist account of the social integration of the individual posed in terms of the direct encounter between an already constituted individual and an already constituted society. For Simondon, the problem of an individual's social integration is a "problem of operations, and not a problem of the relationship between given structures" (Guchet, 2012: 86). Any new individuation requires establishing a compatibility between the disparity of personal and social individuation, something that is not guaranteed. The collective or transindividual dimension of this is referred to as the "in-group" by Simondon (2020: 328-330). Society presents a network of positions or roles "through which individual conduct must pass" where the interior relations of the group can form and where the past and future of each individual "coincides with the past and future of others" (Guchet, 2012: 86; Simondon, 2020: 328). Everyday social life is situated "at the limit of the interiority group and the exteriority group at a certain distance from the individual" (2020: 330). In this way Guchet (2012: 88) acknowledges that the in-group/out-group opposition supports the idea that social reality can appear as a substantive reality that constrains the individual and imposes pathways of being. However, the existence of the out-group is not entirely social in that it "has already opened its personality to the very limits of the in-group". When Simondon writes, "the individual does not enter into relation with the social but by means of the social", Guchet clarifies that we can understand this as supposing that "the individual does not enter into relation with the out-group […] except by means of the in-group" (2012: 89). In other words, the social is formed by "the mediation between the individual being and the out-group through the intermediary of the in-group" (Simondon, 2020: 329). Social individuation is extended where the individual strives to extend the limits of the interiority group, as if it was an open-group or the "social body of the subject". The interiority group is a source of tension/potential much like the individual's future is (2020: 330). It is through individual bodies that it becomes possible to free the self from established structures to become something else. As more individuals participate in this psychic problematic, individual and group individuation become possible. There is a doubling of "individual presence and the operation that defines social presence" (2020: 329).

[17] Simondon (2020: 328) situates these individual-social relations in the individual's temporal relations: "the individual draws on tendencies from the social past and an impetus toward a specific action rather than a veritable remembrance; (the individual) draws from the social past that which would be associated with the dynamism of (their) future and not with the reticulation of his individual past".

[18] Simondon (2020: 333, 335) refers to the figuration of the group individual as being an "overlapping of personalities". An interior group develops a "group personality" that is constitutive of a collective individuation that attempts to resolve conflicts that are present.

Chapter Two

[1] I am not claiming that Burgess and his colleagues "invented" the first actuarial risk instrument. I understand their developmental work as being connected to a wider research endeavour that emerged over the course of the 1920s in parole in the US that used actuarial methods to evaluate and improve decision-making in parole (Warner, 1923; Hart, 1923; Witmer, 1927; Glueck and Glueck, 1930). Most of this work was undertaken as consultancy research contracted by senior parole administrators.

[2] The actuarial infrastructure and its logistical networks were more expansive than simply deploying expectancy tables in the decision-making of the Parole Board and applying the risk principle to parole supervision. After sentencing offenders, they were transferred to a "diagnostic depot" at Illinois State Penitentiary or Southern Illinois Penitentiary where a thorough assessment was conducted to establish a "classification plan" under the co-ordination of the State Criminologist (Burgess, 1936: 497). After this classification was established, the offender was assigned to one of the four state institutions for adult males "with a recommendation for individual treatment". The abstract schema of functioning straddled circuits extending from sentencing, prison classification, prison rehabilitation, and parole and community supervision within an economy where legislation and policy dictated that as many parolees be released as is possible up until a biopolitical threshold where it jeopardised community safety. This penal schema understands the legitimacy and effectiveness of the criminal justice system as residing in the entire regime rather than in one apparatus such as parole despite its political volatility.

[3] The first expectancy table developed by Burgess and his team of researchers arbitrarily selected 22 risk factors that were assumed to be correlated with parole success or failure, given information that was readily available in the inmate case records at Joliet Penitentiary (Bruce et al., 1928: 247; Tibbitts, 1931: 14). These items were correlated with a criterion measure for parole violation where parolees were tracked anywhere between two and a half and five years to provide an aggregate frequency rate of parole violation (Bruce et al., 1928: 221-234). There was no meaningful anticipatory pattern analysis to determine the strength of the relationship for these risk factors. Twenty-one of these items were scored for each of the 1,000 inmates at Joliet and recorded on a summary sheet. Each item was scored with either 1 or 0 according to whether this factor was present or absent based on information in the case file, and then a total risk score was tabulated. Each offender's total score was graded as falling above or below the average aggregate rate of parole violation. This distributed offenders into nine percentile groups to establish the "expectancy rate" for each percentile group (see Figure 3.1). Those at the top of the table had the lowest probability of parole violation and those in groups below this had successively higher probabilities of parole failure. In the bottom percentile group, it was estimated that they had a 76% chance of parole violation. When these expectancy tables were implemented, an actuary completed the expectancy table for each inmate who applied for parole, and a summary report was provided to the parole board that provided a prediction in the format, "This inmate is in a class in which … per cent may be expected to violate their parole agreement" (Evjen, 1962: 216).

[4] Simon (1993: 48) has described this mode of operation as "disciplinary parole" that placed a heavy reliance on the background controls of community that included the employer, the police, and the offender's family. Since 1900 the rising prison population placed increasing pressure on parole boards to release most of their inmates (1993: 47). Rather than demonstrate reformation in the prison or reformatory, parole was considered as a rehabilitative technique given indeterminate sentencing laws that established it as the presumptive mode of release from prison, fostering wide discretionary powers (1993: 46-47). The rehabilitative norm of employment was a partial remedy for the declining availability of prison labour and other managerial problems (1993: 37). At the time that Bruce et al. (1928) was conducting their research into parole the parole system was in crisis due to being considerably under-resourced and was unable to process the volume of parole applicants and provide adequate supervision to those on parole. They proposed a social work model that individualised the conditions under which an inmate was paroled and imposed more rigorous monitoring of those conditions. They envisaged that Burgess's expectancy tables would improve the quality of this case management by incorporating relevant risk information.

[5] Quetelet viewed the average man as being a fictional being (Stigler, 1985: 170). He derived the concept from summaries of anthropometric data that investigated the relationships between, and differences among, groups of people. In this way the rate or propensity could be compared between differing populations. Stigler (1985: 171) describes the concept of the average man as being a way for establishing social physics as a prototype for a mathematical social science, effectively "smoothing away the random variations of society and revealing regularities" as if there was an underlying causal relationship. If the

average of large aggregates remained stable, Quetelet assumed that there was a persistence of causes. Quetelet did not consider that an individual's characteristics could be represented by a deterministic law, believing that "averages over groups could be […] represented" (1985: 172). He later began to consider behaviour as a deviation from a population mean, to attempt to discern lawlike behaviours conceived as being a "constant cause", all other things being equal. Quetelet was unable to combine measurements taken under a variety of conditions into one multifactorial analysis (1985: 173). This limited his application of a theory of probability to mathematical analyses within homogenous cells. He was able to recognise relations across other variables (e.g., between age and crime) but was unable to go any further.

[6] These pre-crime initiatives are outlined in the following research papers: Glueck and Glueck (1950: 22); Craig and Glick (1963); Glick (1972 a, b); Hodges and Tait (1963); Tait and Rogers (1971, 1972 a, b); and Trevett (1965, 1972 a, b).

[7] Advocacy for the use of actuarial prediction in clinical practice can be traced back to the work of Lunderberg (1926, 1941) and Sarbin (1941, 1942, 1944).

[8] In Simon's (1993: 8) genealogy about parole, he links the rise of correctional managerial systems with efforts to "remove discretion from agents of the system". He characterises the increased uptake of actuarial instruments in parole over the course of the 1970s and 1980s with a new control model centred around risk management that repudiated the clinical model and its emphasis on the parole agent and clinical treatment. Using a top-down systemic approach, actuarial instruments like the Wisconsin Risks and Needs Assessment (see Baird, 1981) enabled a continuous assessment of the parolees' risks and needs for classification, control, and treatment to generate a more uniform form of case management modulated by auditable, discrete information that yields results independently of those making the decisions, "eliminating doubts about the capriciousness of the system" (Simon, 1993: 175). He understands this model of risk management as an attempt of the parole division to create a plausible narrative about the operations of parole in the face of considerable public questioning of its activities and the "political liabilities of the clinical model" and the decoupling of its mission from social objectives in the face of mass unemployment in its client-base (1993: 130).

[9] In Castel's view, any clinical diagnosis about dangerousness contains a coefficient of uncertainty that separates the diagnosis from the reality of the act (if it occurs) (1991: 283). There are only "imputations of dangerousness" that, strictly speaking, are probability statements.

[10] Castel (1991: 288) argues that this mode of relating to the subject is not primarily aimed at confronting "a concrete dangerous situation", but rather, anticipating "all of the possible forms of irruption of danger". These preventive efforts promote suspicion cloaked within "the dignified scientific rank of a calculus of probabilities".

[11] Meehl was concerned with the problem of prediction rather than clinical practice more generally. In his formulation the mechanical combining of information (facts about life history, scores on psychometric tests, behaviour ratings or checklists etc.) for classification purposes to calculate the probability of an event as "an empirically determined relative frequency" is an actuarial prediction (Meehl, 1954: 3). In contrast, a clinical or case-study prediction of the same event (e.g., the probability that the client will commit suicide) is formulated on interview impressions, data about life history, and psychometric information. Both clinical judgment and actuarial prediction combine data to generate a prediction. Psychologists and physicians "put data together using informal, subjective methods" (Grove et al., 2000: 19). There is considerable variability in how clinicians do this making it difficult to specify precisely how this is done. In contrast, actuarial or mechanical prediction (e.g., statistical prediction using explicit equations, actuarial prediction using prediction tables, or algorithmic prediction generated from computer programs) do not require expert judgement and can more easily be reproduced.

[12] Several other literature reviews were subsequently conducted after Meehl published his findings (see Sawyer, 1966; Holt, 1970; Sines, 1971; Wiggins, 1981; Dawes et al., 1989; Garb, 1994; Marchese, 1992). All these reviews, other than Holt's, have reached the same conclusions as Meehl.

[13] On the one hand the professional authority of the expert or the case worker is proletarised as their assessment and case management decisions are regulated by the actuarial instrument. At the same time, to the extent that penal policy and practice embraces actuarial justice and its evidence-based framework, their status is paradoxically elevated as data-driven decision-making elevates the status of the decision and

defends its authority from external criticism. Meta-analytic support for actuarial prediction buttresses the authority of psychological expertise specifically. Psychologists remain a core source of authority in the juvenile justice system whose authority is now augmented by actuarial mechanisms. Clinical expertise continues to inform the risk management of violent and sex offenders and the management of offenders with disabilities and offenders with significant mental health and substance abuse issues. Clinical risk assessments now function as an activity of expertise that continues to label an individual by virtue of a diagnosis and then constitutes the individual according to their risk profile, placing the subject of risk "on a career" (Castel, 1991: 290). The clinician is one member of a penal-medico-welfare regime modulated by the notion of a continuity of risk management. This regime operates across a network of intervening sites, providing risk interventions that range from prevention, targeted intervention in the community, incarceration, and after-care. The clinician provides an expert assessment that provides a data-driven, virtual "autonomized management of populations based on the basis of differential profiles" (1991: 291. Under this community-based regime of operation, the clinician takes charge of the specialist assessment but no longer is necessarily the primary of interventions, at least not without the co-operation and combining of other regulatory authorities for maximal control and efficiency.

[14] Much earlier Meehl (1956: 63) had argued that the principle of beneficence requires the psychologist to choose and use the prediction instrument that yields the most accurate predictions even though this may differ in different applications. He comments, "it is foolish, and I would say even immoral, for a trusted […] expert […] to employ a method which has a lower hit frequency than another available method".

[15] In 1984 the US National Institute of Corrections adopted the Wisconsin instrument as a benchmark by which future offender classification systems should be based (Henderson et al., 2007: 95). This coincides with the rise of actuarial efforts that aimed to develop and install actuarial mechanisms for incapacitation (Blumstein et al., 1978; Blumstein et al., 1986) and selective incapacitation (Greenwood and Abrahamse, 1982; Moore et al., 1984).

[16] The developers of the LSI have maintained a sceptical stance about the role of personality tests in correctional practice as matching intervention with the personality type of the offender fails to address the risks that are associated with reoffending (See Andrews and Bonta, 2003: 253-259)..

[17] See https://storefront.mhs.com/collections/lsi-r (Accessed 10 March 2019).

[18] The revised norms for the instrument were based on a sample of 1,414 women and 956 men in carceral settings in Canada surveyed in 1995 (Andrews and Bonta, 2001: 13). The males were from Ottawa-Carleton Detention Centre, the Hamilton-Wentworth Detention Centre, and the Toronto Jail. The females were from a medium-security institution for adult women operated by the Ontario Ministry of Correctional Services. In the US the sample consisted of 19,481 inmates and 4,240 parolees and probationers, most of who were male offenders (17,622 male inmates and 3,523 community offenders).

[19] Andrews and Bonta (2010: iii) consider that their crime prevention program is a call to arms – a moral imperative – founded on a "normative structure of justice" predicated on the psychology of punishment. See (2010: 427-459) for their critique of punishment and the necessity of a psychology of punishment that provides the "working conditions" for ensuring that punishment is effective. Writing roughly 30 years after having initiated their actuarial project they still considered that "crime prevention has been next to excluded because of a focus on due process, just desert, deterrence, 'getting tough', and the fear of offenders being mollycoddled".

[20] The DSM-IV uses the following criteria to diagnose antisocial personality disorder: (1) disregard for the rights of others involving at least three of the following: (a) behaves in a way that is the grounds for arrest, (b) deceitful and manipulative, (c) impulsive, (d) aggressive, (e) irresponsible, (f) lack of remorse; (2) age 18 or more; (3) a history of childhood conduct disorder; (antisocial behaviour not a product of a schizophrenic/manic episode (Andrews and Bonta, 2010: 205). In children, the corresponding "mental disorder" is conduct disorder. Psychopathy is a distinct personality construct with a constellation of affective, cognitive, interpersonal, and behavioural characteristics not shared by other disorders (2010: 210). One of the characteristics that differentiate it from antisocial personality disorder is the emotional-interpersonal dimension (glibness, callous, conning, manipulative, lack of remorse etc.). There are overlapping characteristics between these two diagnoses, although they are distinct disorders. Psychopaths have been viewed as having a stable personality pattern and as being incurable because of their lack of feelings of guilt and remorse (2010: 215, 216).

[21] The DSM-IV provides the following behavioural criteria for diagnosing conduct disorder: (1) disregard for the rights of others or violation of age-appropriate social norms, including at least three of the following: (a) bullies, threatens, or intimidates others, (b) initiates physical fights, (c) has used a weapon, (d) physically cruel to people, (e) physically cruel to animals, (f) has stolen while confronting a victim, (g) forced someone into sexual activity, (h) fire setting, (i) destroyed property, (j) broken into a house, building or car, (k) lies to obtain goods or favours, (l) steals, (m) stays out at night despite parental prohibitions beginning before age 13, (n) ran away from home at least twice (o) truancy beginning before age 13; (2) Childhood onset type: one criterion evident prior to age 10; (3) Adolescent onset type: Absence of criteria prior to age 10 (Andrews and Bonta, 2010: 205).

[22] Andrews and Bonta (2010: 95-99) admired the Gluecks for providing research evidence that differences in "the physical, mental, and social history" of individuals had a significant influence on what happened in the milieu that they inhabited (Glueck and Glueck, 1950: 6). The Gluecks attempted to explain why some individuals living in the same milieu became delinquents while others didn't.

[23] Bonta (1996: 19) characterises first generation instruments as being "subjective assessment, professional judgment, intuition, and gut-level feelings". They have been widely criticised for permitting too much discretion in how individuals are assessed, for too easily overlooking or overemphasising different kinds of information. In addition, they compromise accountability and fairness in decision-making, there is poor agreement between different assessors about likely outcomes, and the evidence indicates that the predictions about future criminal conduct made by clinical and expert authorities do not meet acceptable legal, ethical, or practical standards. While Bonta argues that they are not as good as objective actuarial risk assessments, they still play a role in offender assessments.

[24] For example, neither the Burgess or Glueck instruments could be considered as emphasising static factors and were developed to include rehabilitative and risk reduction objectives.

[25] Bonta considers that "second-generation" instruments are primarily instructive about risk classification in terms of placement and release. He argues that these instruments over-rely on static factors ignoring the present circumstances of the offender, which limits their predictive utility and provides limited assistance in how to treat the offender to bring about positive change.

[26] Bonta's (1996: 30-31) paper ends with six steps that he considers necessary for an "empirically based" approach to risk assessment and "rehabilitation": (1) administer the "best validated" risk-needs instruments; (2) ensure that the risk instrument has the capability to plan interventions that reduce risk; (3) risk-need assessment must include criminogenic needs; (4) monitor "changes in offenders situation" through ongoing re-assessment to ensure public safety and evaluate agency effectiveness; (5) identify what aspects of intervention have the capacity to reduce the risk of re-offending; and, (6) attend to the responsivity principle to maximise the effectiveness of intervention.

[27] Nonetheless, the use of these instruments to assess risk can influence decision-making in terms of key post-sentencing decisions such as placement in half-way houses, release on parole or security placement in carceral settings.

[28] It is here that the developers indicate their animosity towards specific kinds of clinical intervention. They single out the delivery of "high levels of an inappropriate service" to a high-risk offender using self-directed active listening as being problematic as it does not address the risks associated with recidivism, citing their own research that this intervention was associated with increased recidivism in high-risk probationers (Andrews et al., 1990: 29). Other "inappropriate" interventions include unstructured psychodynamic counselling, all milieu and group approaches with an emphasis on within-group communication, programs without a clear plan for gaining control over procriminal modelling and reinforcement, nondirective or poorly targeted academic and vocational approaches and "scared straight" programs (Andrews et al.,1990a: 379)

[29] This research included: Wolfgang et al. (1972: 65-87, 248); Shinnar and Shinnar (1975); Blumstein et al. (1978: 64); Cohen (1978: 188); Greenwood and Abrahamse (1982); Zimring and Hawkins (1995: 3). In Wolfgang et al.'s probability modelling "chronic offenders" were profiled as having committed five or more offences before the age of 18 years; they comprised 6% of the birth cohort that they followed over time but 18% of juvenile offenders responsible for 52% of all offences in the group (1972: 248).

[30] Neither Burgess or the Gluecks used the concept of incapacitation arguing that those offenders with the highest risks of re-offending should be sentenced or maintained in prisons and reformatories in alignment

with the legislative provisions of the indeterminate sentence (Burgess, 1929: 544; 1936: 47; Glueck and Glueck 1930: 282-289, 316; 1946: 106). Burgess described this category of offender as habitual and professional offenders while the Gluecks were clear that this segment of the offender population were incapable of change. They commented, "a deplorable proportion of criminals never reform […] there has always been a considerable residue of persons who do not respond to any known form of correctional or punitive treatment" (1930: 316). In their view those who have the highest total "failure score" have no chance of being rehabilitated. In their view "society must provide for wholly indeterminate, probably lifelong, incarceration (for that risk category) […]; at least it must do so until such a time as it has, by experiment, greatly improved and supplemented existing peno-correctional methods" (1930: 293).

[31] This presupposes that these risk factors are dynamic, becoming the focus of their pre-crime preventive work with "delinquency-prone" children. For example, the Gluecks (1970: 55-56; 1972: 123-125) analysed 111 child traits, familial and other "social" factors to construct a typology of aetiological offender types (1970: 60). The typology was really three risk profiles where children were classified into low, even chance, and high-risk categories that extended the number of variables beyond their original social prediction table that concentrated on the family. Logistically, this incorporation of multiple risk domains adopted a risk matching principle where the three profiles indicated differing types of intervention. The high-risk group was described as the "hard core" boys, profiled as lacking conscientiousness, being unconventional, being non-submissive to authority, adventurous and defiant. This implies high levels of control, including the possibility of selective incapacitation. Risk is conceived as being more dynamic and uncertain in the "even chance" group necessitating rehabilitative and corrective interventions into "unfavourable" conducts (lack of conscientiousness, adventurousness, unconventional behaviour) and unfavourable conditions in the family (unsuitable supervision of the boy by the mother, unsuitable discipline of the boy by the mother, lack of familial ambition, and poor family standards of conduct).

[32] The Ottawans have staunchly refused to accept that the optimisation of human needs such as friendship, enjoyable work, loving relationships, creative pursuits, sexual satisfaction, positive self-regard, and an intellectually challenging environment should be the primary goals of offender rehabilitation. They consider that interventions focused on these aspects of the human condition do not necessarily reduce criminogenic needs or ultimately recidivism (Andrews et al., 2011: 736). They claim, "When the contingencies of human action are ignored, actions based on fundamental human needs and positive gaols can be criminogenic. It is not sufficient to highlight the accumulation of goods. It must be made explicit that the contingencies should be supportive of noncriminal alternative routes to rewards" (2011: 740). The contingencies they refer to here are whether the personal, interpersonal, and community supports for offenders are unfavourable or favourable to crime and other forms of anti-social conduct.

[33] The Reasoning and Rehabilitation Program began as a program that targeted young female offenders at an offender training school in Ontario, implementing several behavioural modification techniques (Kendall, 2002: 192). One of these techniques, co-opting, persuaded girls to coerce one another into the desired behaviour through peer pressure. Kendall suggests that the rise of cognitive behavioural programs was founded on quite rocky foundations – staff at the training school along with Ross were accused of physical, sexual, and psychological abuse against ex-inmates and the school was closed in 1976.

[34] This tactic is masked within a benign discourse where the responsivity principle "necessitate(s) a matching of client characteristics with treatment. It is quite possible that withdrawn and shy clients may respond best when treatment is given on an individual basis, whereas extroverted, self-confident clients may respond well to a group therapy format" (Bonta, 1996: 32).

[35] One of the major goals of the developers was to "strengthen adherence with the principles of effective treatment and to facilitate clinical supervision devoted to enhance public protection from recidivistic crime" (Andrews et al., 2007: 8). Research had demonstrated that there was no guarantee that correctional authorities necessarily formulate case plans based on the results of the risk/need assessment (Bonta et al., 2004; Girard et al., 2004; Schwalbe, 2004; Luong and Wormwith, 2011; Miller and Maloney, 2013).

[36] In the case management component of the data structure there is a summary of decisions that have already been made in accordance with the current risk/need assessment. The action plan records the identification of targets, the plans to address them and the approaches taken to do so. Changes and noteworthy developments are recorded in the progress sections. The last sections provide a discharge summary that overviews the offender status upon completion or termination of supervision and the extent to which legal conditions and program objectives have been met (Bonta and Wormwith, 2007: 147).

[37] Cybernetics is an interdisciplinary technical field that has its origins in the early 1940s during World War II, becoming part of the military-scientific assemblage that extends into the present (Pickering, 1995; Tiqqun, 2020). Machines were imagined as performative agents that could do things that unaided human minds and bodies could not (Pickering, 1995: 3). Cybernetic machines focus on developing technical solutions to automate predictions about the behaviour and motion of objects based on probabilities where biological, physical, and social behaviours are understood as being "programmed and re-programmable" (Tiqqun, 2020: 1). At the heart of this problematic is the desire to "do away with the impossibility of determining at the same time the position and behaviour of bodies (Sprenger, 2019: 78). Sprenger understands the problem of prediction as a concern about eliminating delays in the mediated transmission of risk information for the effective capture of its target: "if the object whose movement or behaviour is to be observed happens to move, then it will already be in another location in the time it takes to react and transmit information about this […] movement to the observer". This problem was at the core of Weiner's efforts in World War II to generate a cybernetic solution that calculated the amount of time needed for a bullet or missile to reach a moving target, requiring that an effective shot must be aimed at the plane's future location.

[38] In Section 2 of the LS/CMI scoring instructions these risk/need factors are described as specific criminogenic needs that are not generalisable to the offender population as a whole, many of which Andrews et al. (2004b: 21) considered as having a scant evidential basis (e.g., fire setting, terrorism)

[39] See https://storefront.mhs.com/collections/ls-cmi (Accessed 10 March 2019).

[40] Holtfreter et al. (2004) provide a very strong challenge to the capacity of the LSI-R to adequately assess levels of risk for women. This is discussed in more detail in Chapter Seven. Monahan et al. (2001: 133) have argued that professional over-ride can be justified if the assessor does not have sufficient confidence in the generalisability of an actuarial instrument to differ from those upon which the instrument was constructed and validated.

[41] This vulnerability checklist is outlined in Hoge and Andrews (2011: 62-64; (Part three: Assessment of other needs and special considerations). It comprises 45 items and is structured as being the final round of assessment to be conducted. This assessment is conducted after assessing the total risk of reoffending and profiling the individual's criminogenic needs to prepare a case management plan. These needs and considerations are not allocated a risk score; instead, the "needs" specified are used to incorporate additional strategies or techniques of intervention that are assembled into the case management plan. This is discussed in further detail in the next chapter.

[42] These include depression, anxiety disorder, conduct disorder, psychosis, learning disability, physical disability, and foetal alcohol spectrum disorder.

[43] For example, cruelty to animals, prior assaults on authority figures, escape from custody, fire setting, and running away from home or a supervised placement.

[44] For example, communication difficulties, low self-esteem, poor social skills, shyness, and withdrawn behaviour.

[45] For example, manipulative behaviour, underachievement, and the denial of guilt or problems.

[46] In Andrew et al.'s (1990a) initial account of responsivity an ideal type of offender is presented and contrasted with problematic cases that warrant more intrusive interventions. The ideal offender was as an adult, white male depicted as being "amenable" to treatment programs. He was presented as being "verbally skilled, mature, anxious, and motivated to participate in sessions with the caseworker" (1990a: 38). This contrasts with "antisocial personality types" who were depicted as psychotics who were "relatively unresponsive to rehabilitative efforts […] (as a result of) a combined function of their high risk levels (intensive controls and service are indicated), multiple criminogenic needs (impulsivity, pro-criminal sentiments, and isolation from criminal others should be targeted), and scores on responsivity factors (low empathy, low anxiety) that indicate high levels of structure" (1990a: 42). Poor responsivity introduced additional measures that included drug therapy rather than cognitive therapy (intensive controls rather than rehabilitation, installing legal obligations into therapeutic contexts to manage "acting out" or lack of co-operation/participation in the program, isolating offenders from antisocial associates or actively neutralizing procriminal pressures of criminal associates through the structure of the program, or redeployment of the individual with mental health difficulties or intellectual disabilities into a "sheltered workshop" (1990a: 41-44).

Chapter Three

[1] Most of these orders are community-based orders with a small number of suspended sentences with supervision.

[2] The remainder of determinations suspend the sentence without supervision (BOCSAR, 2020). A further 10% of young people who the court referred to Youth Justice Conferences have received a dismissal after successfully completing the negotiated outcome plan agreed to by the parties at the conference. In addition, a very small number of young people (2.7%) who breached their community bond have no further action taken.

[3] For an overview of the general critique of welfarism in relation to young offenders see Muncie (2004: 259-262) and Pratt (1989: 238).

[4] S. 33 of the CCPA, 1987 introduced a hierarchy of sentencing tariffs that were proportionate to the offence. At the same time these penalties introduced a wider range of sentencing options including good behaviour bonds, Community Service Orders, and the adjournment of proceedings to assess the young person's capacity for rehabilitation in addition to the older penal welfare sanction of probation.

[5] By the late 1980s an emphasis on community policing resulted in the establishment of a community infrastructure for police-community partnerships and crime prevention including local neighbourhood watch groups, local consultative committees, and the establishment of youth specialist police liaison officers (Youth Justice Coalition, 1990: 213; Seymour, 1988: 154-162). Pratt (1989: 246) characterises these developments as a shift towards "corporatist intervention and regulation in the penal spectrum". Diverse agencies and authorities are encouraged to work together directed by centralised policies that use extra-juridical-administrative structures and forms of decision-making that are implemented at the community level. This extends the regulation of young people deeper into the community, simultaneously extending and weakening the former juridical/rehabilitative framework of the Children's Court and its child welfare legislation to facilitate the use of extra-legal tariffs and other preventive measures (Pratt, 1986: 219-219). This was a step in the direction of targeting "potential delinquents" subsequently inflating and extending the youth crime problem to establish a more extensive mode of biopolitical control. This policy direction is consistent with the growth of diversionary and preventive measures and a decline in the number of post-adjudication interventions even though the sentencing options of the Children's Court would be extended. Diversion provides a biopolitical mechanism that can more quickly and cost-efficiently direct young people away from or towards the Children's Court. Pratt (1986: 229) describes diversion as a "delinquency-processing apparatus" that is not reliant on legal formalities, "nor designed for the individual need and welfare of each child". The target is the youth population where contacts and sanctions can be noted and recorded and where young people can be interpolated into a surveillance regime.

[6] This aligned with NSW Government's response to the Juvenile Justice Advisory Council's (1993) proposals for reforming the youth justice system to incorporate community alternatives to court processing (known as the "Green paper"). The "White paper" was titled "Breaking the crime cycle" (NSW Government, 1994). The Green paper proposed that a state-wide, state-controlled "formal, integrated, consistent, accountable and coordinated offence resolution framework" be established in NSW (JJAC, 1993: 115). The government endorsed a regulated diversionary scheme that included police cautioning and a community-based "conciliation" of the harms of crime involving the victim and the offender, where the young person agreed to some form of reparative action (NSW Government, 1994: 14). The slogan "breaking the crime cycle" assumes that most young offenders can be diverted as it was assumed that the majority would not re-offend while Youth Justice would need to manage the smaller segment of the youth population who re-offend where a disproportionate number of these were First Nations young people.

[7] In Garland's (2002: 124-127) account of the responsibilisation strategy, governmentality is "a kind of indirect action" or "government at a distance" where state agencies "activate action by non-state organisations and actors" (2002: 124). In his terminology these strategies are described as being "more or less directed, more or less informal crime control". In the case of Youth Justice in NSW the state has adopted a more formal kind governmental network that regulates the conduct of community agencies by contractual mechanisms that ensure that agency policy and practice for delivering services to the department's "clients" are in alignment with the emerging standards of "evidence-based" offender programming. Garland (1996: 454) was clear that the state continues to retain its traditional functions as

well as taking on a new set of co-ordinating and activating roles that over time become new structures of support for governmental action.

[8] See United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, Rules 23 and 24.

[9] See United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, Rule 17, especially the commentary on that rule. The conflicting rationales that guide the punishment of offenders are described there as being "more pronounced in juvenile cases than in adult cases".

[10] The Ottawans began this kind of endeavour from the 1970s starting with evaluations of rehabilitation programs in institutional and community settings to demonstrate that these programs could reduce recidivism (Gendreau and Ross, 1979; Ross and Gendreau, 1980). They later began identifying which programs worked and which ones fail, concluding that "effective" programs targeted offender behaviour and their cognitions (Ross, 1980). They considered both youth and adult offenders to have deficit cognitive skills that placed them at risk of developing an anti-social lifestyle (Ross and Fabiano, 1980). They subsequently developed a Reasoning and Rehabilitation Program designed to be implemented by probation officers and that targeted high-risk adult offenders, demonstrating that cognitive training can lead to a major reduction in recidivism (Ross et al., 1988).

[11] See Chapter Six. Meta-analyses deploy the logic of extensionality. They assemble and standardise the latest evaluation data about treatment or risk prediction instruments capturing local, contingent, and small data sets to determine the strength of the "effect size" to make more authoritative claims about effectiveness based on a much larger dataset. Lipsey (1992) conducted the first meta-analysis specific to youth justice. By 2013 Kim et al. reported that they were able to find 230 published meta-analytic studies in the field, 85 of which were concerned with youth justice interventions.

[12] For example, see the Blueprints for Violence Prevention website: https://cspv.colorado.edu/who-we-are/ (Accessed, 20 September 2022). This data repository has been in operation since 1996 curating a considerable amount of information about "what works" within the area of juvenile justice programs. The site resembles a clearinghouse that reports on research about the effectiveness of programs as well as providing consultative training and technical advice for implementing its endorsed programs. The site is curated to assure the potential user that its programs meet the highest benchmarking standards that require evaluations that use rigorous experimental design, and that can demonstrate significant treatment effects that persist after the young person has left the program. Programs are endorsed within a hierarchical rating system as being "a model program, plus", a "model program", or a "promising program". Another example is the US Federal Department of Justice's Crime Solutions website that operates as a clearinghouse to rate effective justice programs using a rating scheme that assesses whether they are effective in achieving their outcomes, they are promising, or they have no demonstrated effects. See https://crimesolutions.ojp.gov (Accessed 20 September 2022).

[13] See https://www.raisetheage.org.au/?utm_source=campaignmonitor&utm_medium=email&utm_campaign=videoevent (Accessed 20 September 2022).

[14] In terms of reducing re-offending, the state plan is explicit in that it targets a smaller segment of the offender population who are "prolific offenders" (NSW Government, 2006: 29). The plan set the target of reducing the proportion of offenders who re-offend within 24 months of being convicted by a court or having been dealt with by youth justice conferencing by 10% in the next 10 years. Data from 2003 indicated that 53.4% of young offenders re-offended within 24 months. It was envisaged that first time young offenders were potential re-offenders and were viewed as necessary targets in breaking the cycle of "entrenched criminal and anti-social behaviours" (NSW Government, 2006: 29). Key strategies were to extend community monitoring of those considered at high-risk of re-offending, to develop risk intelligence networks for cross-agency information sharing, and to use actuarial risk assessment instruments to identify first and second time young offenders who were anticipated to become high-risk offenders and target them for "early intervention". Given this framing of the problem, the targeting of high-risk offenders is inseparable from the targeting of anti-social behaviour.

[15] This legislation amended the Children (Criminal Proceedings) Act, 1987, the Children (Detention Centres) Act, 1987 and the Crimes (Administration of Centres) Act, 1999 to "enable offenders who are dealt with

under the CCPA, 1987 to be required to serve any sentence of imprisonment imposed on them either at a detention centre or at a […] juvenile correctional centre", to enable the young offenders to be transferred from youth detention to prison and vice versa, and to manage young offenders in the adult correctional system (Dr Gordon Moyes, 2nd reading speech, Juvenile Offenders Legislation Amendment Bill, NSW Legislative Council Hansard: 13741). "The reality is that juvenile correctional centres will be created to address the current lack of effectiveness of juvenile justice centres in managing hard juvenile offenders such as those featured in the recent case involving Kariong. My experience earlier in life as a parole and probation officer convinces me that many juvenile offenders are too old and too violent to serve their sentences in a juvenile justice centre. The choice of rehabilitation systems is much more extensive in the adult prison system than it is in the juvenile justice system, so members of Parliament are faced with a real dilemma in deciding what is best for those who are too old or too violent".

[16] The YLS/CMI (Hoge and Andrews, 1995) retains the operational structure of the LSI (Andrews, 1982) reflecting a series of minor modifications that reduced the number of risk items included from an initial 112 risk/need items to 42 items that are distributed across eight risk domains.

[17] These evaluations were conducted by the developers and other members of the Ottawa School (Andrews et al., 1986; Shields and Simourd, 1991; Simourd et al., 1991; and Simourd et al., 1994).

[18] Jung used a dichotomous measure of recidivism, reconviction within a six-month follow-up period between 1995 and 1996. She tracked 263 young offenders in Ontario, 81.4% who were on probation, and the remainder who had served time in detention. She found a base recidivism rate of 76% (Jung and Rawanda, 1999: 77). It appears that no measure of predictive accuracy was conducted, although a one-way analysis of variance found that those offenders classified as high-risk were more likely to recidivate, this also holding across all risk domains in the instrument. This is unsurprising given the very high base rate. The raw data indicated that the false positive rate was 36% while the false negative rate was 15%.

[19] The instrument retained the eight risk domains of the parent instrument, while six additional items were added to the 42 original items in that instrument (Thompson and Pope, 2005: 208).

[20] Thompson cites three studies to make these claims (Jung and Rawana, 1999; Simourd and Andrews, 1994; Hoge and Andrews, 1995). The last of these references is the original adaptation of the parent instrument derived from the LSI-R, which had not then been validated and which remains unavailable publicly.

[21] Hannah-Moffat and Maurutto (2003: 9-13) reviewed the research about the validation of actuarial instruments then being used in youth justice, finding that only a small proportion of these studies had been published in peer-reviewed journals internationally. They implied that most of the studies conducted in Canada had been undertaken by researchers working in the criminal justice system or by the developers of those instruments and their students, reflecting a "vested interest in the promotion of these tools" (2003: 6). They found that most of the LSI adaptations had been developed in Ontario (by a network of Ottawan researchers) and were becoming more widely used on the assumption that these construction samples were transportable to other youth justice jurisdictions, perhaps with minor modifications to the risk classification scheme of the parent instrument. Their research confirmed that the only study then available that tested the predictive validity of the YLS/CMI was Jung's (1996). See (2003: 12-13) for a summary of the methodological limitations of the instruments then in use in youth justice.

[22] Policy discourse dictated that it was "mandatory to complete the Inventory when a client is to receive supervision as part of a community-based order" and "mandatory" to complete the Inventory for those young offenders who were sentenced to a control order (DJJ, 2002a: 4)

[23] For example, the Violence Risk Information Report was used in conjunction with the YLS/CMI-AA. The Department provided several specialist services such as the Forensic Psychology program, the Sex Offender program, the Violent Offender program, and the Alcohol and Other Drug Program where specialist assessments could be conducted and specialist interventions provided (DJJ, 2003a: 25).

[24] This is in contrast with Simondon's (2017: 105) conception of a major relation between a technical object and humans that operates on an equal and open-ended relation that continues the evolution of the technical object by ensuring a reciprocity of exchanges between the technical object and social relations to draw out new potentials given tensions and incompatibilities in technical-human relations.

[25] The percentage reported here is based on the average daily number of young people on any given night.

[26] See Feeley and Simon (1994: 175). They characterise selective incapacitation as being an actuarial sentencing scheme that determines the length of the sentence according to a risk profile rather than the nature of the criminal offence or an assessment of the character of the offender. In the context of preventive detention, the strategy operates as an alternative administrative regime that uses actuarial methods to determine whether there is an unacceptable risk that justifies refusing bail. Their analysis is founded on the development of specialised pre-trial release agencies that attempted to base the conditions of bail release on actuarial models that predicted appearance and non-appearance at court (1994: 176).

[27] Under s. 16 of the legislation, these "show cause" offences include any offence punishable by imprisonment for life, a serious indictable offence that involves sexual intercourse with a person under the age of 16 years by a person who is above the age of 18 years or that inflicts actual bodily harm with intent to have sexual intercourse with a person under the age 16 years by a person who is above the age of 18 years, as well as a number of other serious indictable offences.

[28] While the primary aim of assessment is conducting an initial assessment to identify the immediate needs of the young person so that they can be granted bail, it is also concerned with the assessment of risk which spills into the information provided to the court for the bail application. In broad terms policy framed this as ascertaining "the level and type of risk posed by, and the criminogenic needs of, the young person" (DJJ, 2003a: 21). A broad range of criteria are taken into account including the present ability of the young person to take personal responsibility for their actions and the level of empathy for the victim; the perceived threat that the young person poses to their victim/s and community safety; the young person's understanding of the high-risk environments that may lead to offending behaviour; the pattern and history of previous offences; the learning style of the young person; the factors in the young person's life associated with the risk of re-offending; parental/guardian capacity and commitment to be involved in change and supervision requirements; protective factors or strengths that can be built upon and direct the young person toward a positive lifestyle; the health, mental health, disability, intellectual disability and/or any other issue that may be a barrier to participation in a case plan; dependence on drugs and alcohol; peer influences; antecedents and current legal status; lack of involvement in education, training, and employment; level of income or poverty; social isolation; lack or type of accommodation or homelessness; neglectful, abusive, or difficult family relationships or criminogenic family background; and, physical, developmental, mental health, or intellectual disability (DJJ, 2003a: 21-2).

[29] Most young people on remand in NSW are granted bail within 24 hours, where onerous bail conditions are often imposed (Klauzner, 2021: 2-3).

[30] When there are no prior records, no previous convictions, no guilty plea, and a background report is not requested by the magistrate the YLS/CMI-SV is administered to establish an initial risk profile (Juvenile Justice, n.d. c, 12-13).

[31] See s. 25 *Children's (Criminal Proceedings) Act, 1987*. A background report can be requested by the Children's Magistrate to assist in making a sentencing decision. The background report continues to use the discursive practices of welfarism where the regulations stipulate that the report should include the following: the child's family background, the child's employment, the child's education, the child's friends and associates, the nature and extent of the child's participation in the life of the community, the child's antecedents, the child's disabilities, other relevant matters required by the Children's Court, and other matters the prosecutor considers appropriate to include in the report (Clause 6, *Children (Criminal Proceedings) Regulation 2021 (NSW)*).

[32] Maurutto and Hannah-Moffat (2007: 474-480) found that knowing that a young person had a high-risk score could become part of plea bargaining by the young person's defence solicitor, resulting in an intensification of conditions for being sentenced into the community. They suggest that some of the risks reported to the court have no bearing on the commission of the offence, thus conflicting with the principle of proportionality.

[33] For example, an offender may commit a minor offence, and because of their level of socio-economic marginalization, they may be profiled as being a high-risk offender. Two offenders may commit very similar crimes, and because of differences in risk classification scores, one case might be filed down, and another case subjected to multiple interventions because of high scores across many of the domains in the risk profile. Risk scoring across the seven domains of criminogenic need may impose interventions on the young

person that have no bearing on the circumstances under which the crime was committed (Maurotto and Hannah-Moffat, 2007: 478-79).

[34] This data ignores all other sanctions imposed under the *CCPA, 1997* limiting the analysis to community-based orders and control orders.

[35] Chen et al. (2005: 3) found that 68% of young people who were sentenced in the Children's Court re-offended within eight years, with 43% reappearing at least once in the Children's Court; 57% of their sample were later convicted in adult courts. Their recidivism measure was captured from court data between 1995 and 2003, prior to the implementation of the YLS/CMI-AA. More recent data provided by Smith and Weatherburn (2012: 14) captured between 2007 and 2009 found an even higher rate of recidivism, with 64.8% of their court sample re-offending within 24 months, where the time to re-offend was approximately 9.6 months.

[36] See s. 4 (1)(a) (b) (c) *Children (Detention Centres) Act, 1987 (NSW)*. In addition, this clause of the legislation requires that practices within the centre afford paramount consideration to the young person's welfare and interests (s. (2) (a)) and that the punishment imposed by the court "is the only punishment for that offence".

[37] This classification system places the young person in the youth detention system solely based on safety concerns (probable violence to the public, staff or other detainees or the good order of the operations of the detention centre). Youth Justice policy claims that the system affords the same weight to detainee and staff security as it does to rehabilitation and education (Youth Justice, n.d. a: 1). There are six security categories: Unclassified (managed as a high/medium security risk); A1 offence (committed murder, manslaughter, all sexual assaults) or A1 behaviour (detainees who commit violent incidents in custody or who attempt to escape more than twice) (managed as a high threat); A2 (managed as a high/medium threat); B1 (managed as a medium threat); B2 (managed as a low/medium threat); and B3 (managed as a low threat). An initial assessment is conducted to classify the level of threat to others using an instrument that scores the severity of the current offence, severity and number of prior convictions, history of institutional violence and escapes, drug usage, mental health, and stability factors (n.d.: 2). Another instrument is used to review the classification level scoring the severity of current offences and prior convictions, history of institutional violence and escape, current behaviour in custody including the number and severity of incidents and misbehaviours and participation in case planning. These two actuarial instruments are of a different order to those of the YLS/CMI-AA and need to be interrogated in terms of their individual ontogenesis and evolution, which is beyond the scope of this thesis. The developers of these instruments (James Austin and Garry Coventry) claim that they were developed on "objective criteria proven by research to be associated with detainee violence" (n.d.: 2). An enormous amount of other risk intelligence data is used in conjunction with the review instruments including intelligence gathered from telephone monitoring, random and targeted urine sampling, searches using drug detector dogs, electronic records of incidents in the centre, records of misbehaviour, violence risk predictions using the Violence Risk Information instrument and risk screening for potential mental health, and behavioural and substance use problems that need immediate intervention using the Massachusetts Youth Screening Instrument (n.d.: 4). The actuarial regime has been designed as part of an economic objective to place a larger proportion of detainees in lower classification placements as well as reduce the level of violence, assaults, and escapes. Those who are classified at the higher levels of the A category are logistically subjected to a more indefinite and pure form of incapacitation as described by Feeley and Simon (1994: 174-175). In their words, "if the prison can do nothing else, incapacitation theory holds, it can detain offenders for a time and thus delay their resumption of criminal activity in society". To the extent that young people are classified at these high threat categories and forced to live in proximity with one another in maximum security units in the youth detention system, the young person's rights to rehabilitative and re-integrative efforts are undermined. (See Rules 27, 28, 30, 31, 38, 59, 60, and 61 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by General Assembly resolution 45/113 of December 1990).

[38] For example, an A1 offence classification restricts access to programs classified as lowest possible risk as the detainee is "potentially at high risk of harming staff or other detainees […] of disruptive/destructive behaviour […] (and at) high risk of disruptive/destructive behaviour" (Fish Payne Pattenden Viney Pty Ltd, 2004: 177). The young person is not allowed leave or attend escorted absences, except for approved medical appointments, to visit sick relatives or attend a funeral, and needs to be accompanied by two officers while being handcuffed. A young person needs to be classified as a B2 Low/medium threat,

someone who "presents few management problems and can therefore be managed in a less structured environment" (2004: 181). This classification is conditional on adjusting to the detention centre, and participating in, and being motivated to meet the priorities established in the case management plan. This classification schema, it limits on access to programs and its regime for managing challenging behaviours by using force, segregation, and solitary confinement treats the young persons as if they are pure instruments of danger and resistance. They are no longer treated as children who operate in the same way as children do but as combative instruments that threaten the good order of the detention centre. This security-driven combative logic diminishes consideration of the welfare and interests of children as well as misrecognising that many challenging behaviours young people display in detention are linked to pre-existing and developing cognitive and mental health conditions or complex histories of child abuse, trauma, and the intergenerational effects of settler colonialism.

[39] Case planning operates in tandem with a behaviour management incentives schema and a disciplinary regime for managing difficult behaviour and critical incidents that may occur in detention (e.g., disturbances or rioting, assaults, escapes). In this way the distinction between carceral security and risk case management is blurred as these interacting mechanisms operate in synchrony to combat challenging behaviours as a primary driver of operations. Policy characterises this as "program integrity", where case management priorities, incentives, and discipline are relayed into one another to ensure that all targeted behaviours relate to "the young person's offending behaviour, general behaviour, emotional and social development, and eventual return to the community" (DJJ, 2003a: 38).

[40] A risk assessment is conducted to profile a young person's problematic behaviours and the situations that escalate these behaviours, and a risk management plan is then developed to monitor and record behaviour, provide strategies for interacting and negotiating with the young person, and to impose restrictions on daily activities including the routine use of segregation for all or part of daily unit routines (Youth Justice, 2016b). In effect they are subject to the routine and excessive use of solitary confinement even when they are at risk of self-harm or suicide. An inspection of NSW's detention centres in 2018 found that Youth Justice relies on the use of confinement to manage young people who present with challenging behaviours even though this is not in accordance with international standards relating to the rights of young people in custody (Inspector of Custodial Services NSW, 2018: 16, 96-157). Most risk case management plans provide for segregation, which is either continuous or periodic (2018: 19).

[41] Under s. 4 (s. 2 (b)) of the *CDCA, 1987* the administration of youth detention centres should not impose additional punishments in addition to the one imposed by the court.

[42] Young people are depicted as "transitioning from a relatively structured […] environment […] and returning to, sometimes unstable environments" Youth Justice, (n.d. b: 1).

[43] See Chapter Four in the section about modulating clinical risk.

[44] Case conferences are mandatory for use in custody, used at the beginning of a control order to review progress and at the time of discharge (Youth Justice, 2016a: 6). In the community YJOs have the discretion to determine the necessity and frequency of using a case conference.

[45] The policy stipulates that there can only be one case plan even though there may be several concurrent service providers (DJJ, 2003a: 29). All stakeholders, including the young person, should have a copy of this plan. The plan has a standardized format that can be relayed into CIDS to incorporate "simple, measurable, achievable, realistic (goals) and […] set time frames […] focused on successful community integration". The plan stipulates the goals the young person "has agreed to work towards" and specifies the steps and strategies to achieve each goal (Youth Justice, 2016a: 4). There may be criminogenic needs that have been identified by the risk assessment that will be addressed later while the young person is still under community control.

[46] The policy stipulates that if the young person doesn't attend then the meeting should be described as "a case discussion" (DJJ, 2003a: 26). The case manager must encourage them to participate; if they don't attend, the reason for their non-attendance should be noted and no decisive action taken until they are "consulted" so that they will be fully aware of what is expected of them. Elsewhere young people are described as being "legitimate stakeholders" whose views and concerns need to be incorporated into service provision (2003a: 11). Apparently, they can have a say in the decisions and processes that affect them, but their only recourse for challenging those decisions is to make an appeal.

[47] In NSW, community agencies are contracted in Youth Justice Joint Support programs to achieve targets specified in their risk case management plan after a YJO has completed a risk assessment (Loymer and McGregor, 2021: 6-7). In this way, the agency delivers a significant component of the state's coerced risk management interventions while they are still under the supervision of the YJO. The agency's performance in meeting specified targets is auditable. The staff managing the young person are required to meet regularly with the YJO to establish target outcomes and progress in meeting these objectives. They are required to submit six weekly and exit reports and attend meetings to discuss other performance issues (2021: 7). The agency that delivers these services is also required to meet quarterly with a Departmental Area Manager to discuss their Service Delivery Summary Report.

[48] The variation of a good behaviour bond or probation order is made through the Children's Court under s. 40 of the *Children (Criminal Proceedings) Act, 1987*. It is not possible to extend the period of an order (s. 40 (2)).

Chapter Four

[1] Abduction is a concept developed in the pragmatist philosophy of Charles Pierce. In instances where there is genuine doubt, uncertainty, fear, or considerable pressure to act the subject enters "a state of preparedness for being unprepared" (Reichertz, 2007: 221, cited in Adams et al., 2009: 261, *fn*1).

[2] Data is the "material produced by abstracting the world into categories, measures and other representational forms…that constitute the building blocks from which information and knowledge are created" (Kritchen, 2014: 1). The concept of datafication was introduced by Mayer-Schonberger and Cukier (2013: 78) to describe the technical operations that "datafy" phenomenon", that is, "put it in quantified form so that it can be tabulated and analysed ". In their thesis datafication produces a digital text that is "indexable and thus searchable" rendering human life suspectable to being analysed on a mass scale as big data by automated technologies" (2013: 84).

[3] Prior to administering the instrument, the assessor must acknowledge that they have informed the young person about the limits of confidentiality and that they have completed a consent form (Yassine, 2019: 42). Details about the young person are recorded and linked to a unique number allocated to the young person upon entry into the youth justice system. There is also space for including "additional information" and for identifying the source of the information used in the assessment.

[4] This is the only item in the instrument that is scored a 2 where it is assumed that early entry into the juvenile justice system elevates the risk of recidivism.

[5] The inclusion of risk items that correlate with antisocial personality/behaviour and anti-social attitudes/beliefs in other risk domains such peer relations (having delinquent friends or acquaintances) or problematic conduct in school (playing up at school, threatening behaviour, hostile attitudes to teachers or peers) compromise the construct validity of the instrument as items are included across risk domains that are not independent from one another, thus elevating the anticipated level of risk. In her post-structural analysis of the YLS/CMI-AA Yassine (2019: 90) makes a quite similar point, describing the eight risk domains as being connected to one another where "the underlying logics are repeated within and across the […] domains". She was trained to administer the instrument in NSW regarding the training as emphasising that the domains of anti-social personality/behaviour and anti-social attitudes/beliefs were the "big two" risk domains that predicted high-risk (2019: 41). Early data analysis on the psychometric properties of the instrument suggested that there were items in the instrument that were poorly endorsed (outcome of first court order, delinquent friends, and delinquent acquaintances) and that 60% of items were linked to several risk domains in the instrument, in particular family and living circumstances, substance abuse, aggressiveness, prior and current offences and anti-social personality/behaviour and anti-social attitudes and orientation (Thompson and Pope, 2005: 209-210).

[6] This is a very common criticism that has been made of the LSI family of instruments. Many of the items in the criminogenic risk domains are linked with socio-economic marginalisation, often elevating risk scores so that young people receive more intensive interventions (Maurutto and Hannah-Moffat, 2007: 484). This difficulty is exacerbated by the intersectional relations that exist between gendered, racialised, and socio-economic differences and inequalities. As Hannah-Moffat and O'Malley (2007: 8) demonstrate "risk is shaped by, interacts with and (re)produces…configurations of inequality". Not only might (for example) gendered relations shape risk, these intersectionalities operate in complex ways depending upon whether

the young woman is from an Indigenous background, has a disability and so on. This would have a multiplier effect across the domains of the instrument that tap into the dimensions of this intersectionality without acknowledging this effect (e.g., a constellation of factors that might link with family and living circumstances, school difficulties, and substance abuse). Yassine (2019: 141-143) has argued that the supposed gender neutrality of the YLS/CMI-AA has the effect of producing young men and boys as risky subjects as if they are a homogenous group, thus obscuring the gendered pathways that bring young women into the youth justice system. Even though the instrument treats gender as a responsivity factor, the possibility remains that intervention strategies may also deliver programs that treat young women and men in the same way. Risk operates as a proxy for gender, race, class, and other forms of difference. Harcourt (2015: 237) has argued that risk has "collapsed into prior criminal history, and prior criminal history has become a proxy for race" exacerbating racial disparities in the criminal justice system (while ignoring the systemic forces that have produced the high rate of racialized criminalisation in the first place).

[7] Under the professional over-ride principle, it is possible for the total risk score to be adjusted to permit greater discretion in determining risk case management. The developers of the instrument understand this as being necessary when "a generally minor risk factor is major" needs to be incorporated into case management for greater effective control (Andrews et al, 2011: 743). Under this logic the level of intervention would be intensified. In NSW the use of the over-ride function is regulated by policy guidelines that focus on adjusting the level of supervision (that is, the number of direct contacts that the YJO must have with the young person) (DJJ, 2003b: Appendix B). This may result the case being closed if the risk is considered as being low, or by increasing the number of contacts per month on an escalating scale of medium to high-risk parameters. Filing down the case is considered more serious, and is approved at are management level, while increasing the level of surveillance is more readily approved by the local youth justice centre assistant manager.

[8] At that time the instrument began using the revised parent's instrument's Part 3, concerned with an assessment of "other needs and considerations" and Part 4, concerned with the professional override of the total risk score (Hoge and Andrews, 2011: 7; see Appendix Three).

[9] The second version of the parent instrument updated its risk classification norms based on a US sample of 12,798 young males and females, aged 12 to 17 years (Hoge and Andrews, 2011: 3, 67-73). The developers advised that the new US norms should be used given the large sample size. They established four cut-off points to be used for young men in custody, young women in custody, young men on community orders, and young women on community orders (see 2011: 14). This new version was marketed as being "gender-sensitive" because of its use of gendered norms. NSW did not recalibrate the Australian adaptation instrument's norms according to the milieu in which it operated nor gender.

[10] This would result in a minimum of 4 contacts and up to eight contacts per month (Justice, 2016: 10).

[11] Section 6 of the *Children's (Criminal Proceedings) Act, 1987* does not include any explicit principle about proportionality or parsimony. In describing the "legal principles" of case management Youth Justice identifies four relevant principles that relate to their work with young offenders from s. 6 concerned with due process, continuing education, or employment without interruption, allowing the child to reside in their home if possible, and assisting the young person to bear responsibility for their actions, but at the same time, supporting them through guidance and assistance. In addition to this the Department of Juvenile Justice articulated that its interventions should be "the least intrusive intervention appropriate to the court mandated requirements of young people" (2003a: 9). This principle is in direct conflict with the risk principles that mediate risk case management. Maurutto and Hannah-Moffat (2007) argue that actuarial risk case management demonstrates an arbitrariness that is inconsistent with the just desert sentencing principle of young offender legislation. An offender may commit a minor offence, and because of level of socio-economic marginalization be profiled as being a high-risk offender. Two offenders may commit very similar crimes, and because of differences in risk classification scores, one case might be filed down, and another case subjected to multiple interventions because of high scores across many of the domains in the risk profile. Risk scoring across the seven domains of criminogenic need may impose interventions on the young person that have no bearing on the circumstances under which the crime was committed.

[12] Foucault (2007: 19) says: ""one will therefore work not only on natural givens, but also on quantities that can be relatively, but never wholly reduced, and since they can never be nullified, one works on probabilities".

[13] At the very least the justification of acting based on the risk profile, "creates the perception of a defensible decision" (Maurutto and Hannah-Moffat, 2007: 481).

[14] Adams et al. (2009: 253) argue that anticipatory regimes inevitably deploy their preventive logic by "projecting even further back into the younger years" to ward off adverse futures that are often linked to chronic biopolitical conditions.

[15] For example, the structural organisation of social and economic relations under capitalism "produces debility as its by-product in the very material sense of exhausted bodies and minds" (Shildrich, 2015: 14). The materiality of work contributes to cancer, heart disease, lung disease and mental health conditions exposing many to chronic ill-health, dysfunction at work, work injury and disablement, unemployment and economic precarity.

[16] Livingston (2005: 6) considers that a focus on debility denotes the frailties that are associated with chronic illness and the impairments linked to recognisable disabilities. Paying attention to debility makes visible the overlapping relations between impairment, chronic illness, and senescence. Debility may or may not be acknowledged by the self or others, whereas disability is a biosocial identity "that is at once biologically grounded and socially parsed, an umbrella term that denotes different things in different places and at different times" (2005: 7). Rather than considering disability as a fixed state or attribute, Puar asserts that the vectors of bodily capacity, debility, and disability overlap or coexist and that "debilitation is a necessary component that both exposes and sutures the non-disabled/disabled boundary" (2017: xv). Subjects can be recognised and identify as being disabled in ways where some are capacitated, and others are debilitated. Puar (2017: xv-xvi) contends that the biopolitical management of disability affords recognition of disability while often obfuscating the ways in which bodies are routinely debilitated. By appreciating the ways in which subjects are debilitated, it is possible to make visible the limits and possibilities of disability "imaginaries and economies".

[17] Investment in the self, as a form of self-entrepreneurship, folds into consumer markets where the individual "is a producer […] of his (ore her) own satisfaction" (Foucault, 2008: 226). Not only will this satisfaction be unequally distributed and limited by the capital at the individual's disposal, but self-investment also becomes multivalent and more continuous as it begins to connect with programs concerned with lifetime learning and other avenues of capital-ability.

[18] In the surveillance model the activity that is observed and evaluated is accompanied by technologies such as CCTV cameras. In the capture model, the two activities are collapsed into one.

[19] Foucault (1991: 102) coins this governmentality, "the ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of (biopolitical power), which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security". See also Foucault (1978: 139).

[20] Foucault (1977: 187-192) described the examination as exercising power on the "principle of compulsory visibility" involving a mechanism that objectifies bodies and registers and locates the subject's performance relative to others based on a ritualised and standardising examination that links statements and the numerical operations of the examination. The results of these examinations are recorded in a case file and assembled within a vast archive of documents "that capture and fix" the subject within an intense registration system. He characterised this as individualising form of power/knowledge. Within the operations of disciplinary power/knowledge there are two individualising poles: the signature that designates the individual, and the number or administrative numeration within a mass (Deleuze, 1992: 5).

[21] Tracking technologies operate within a complex economy of relations where they are used in a combative way in security regimes that require "its own threatening other" (Crandall, 2005: 21). In this militarised context, a productive economy is established premised on the fears of an enemy that might strike at any given moment. Even in this kind of economy the potential of danger has an erotic dimension that shapes the psychic and collective imagination and that can provide the condition for action. The anticipation of an eruptive event is a matter of fascination or concern becoming a source of affective movement and control. Tracking technologies are also pervasive in media cultures and consumer economies. A subject's position

is located through buying patterns and lifestyles to pre-empt and mobilise future consumptive lifestyles. In marketing analytics, a media user's "dwell time" profiles desire, "whether customers stop at product displays and how long they remain there" (2010: 73). Media cultures mobilise individuals to archive their lives on networked digital platforms where there is an erotic charge in "being-seen" (Crandall, 2005: 5).

[22] Two examples of young people's resistance: (1) "Like…I don't often have fun…But when I do, I just want to enjoy it, you know. I just want to sit there and say" "Why can't everyone leave me alone for fuck's sake?" (L 53:47) (Halsey, 2006: 162); (2) "one of the workers reckons I have to prove myself to them. [But] I don't think I have to prove myself to nobody" (Halsey and Deegan, 2015: 137). In the later narrative, the young person may be viewed as failing to take responsibility for the self and failing to recognise their culpability in the offending behaviour, thus receiving higher risk scores in the ant-social domains of the YLS/CMI-AA. Halsey and Deegan suggest that the young person may be holding on to the idea that "'deep down' he is a good person who has had to negotiate an endless series of bad situations", subsequently pushing others away. This generated conflictual relations between him and correctional authorities who increasingly acted more punitively towards him. He began to feel that he was ultimately on his own: "I don't want [help from] people who's got no faith in me or other people. I don't like those kinds of people. I don't want them in my life, because they put bad energy in my situation".

[23] These modules are concerned with healthy relationships, violence, motor vehicle offending, drugs, and alcohol, living independently and education/work.

[24] See Juvenile Justice (2009: 29, Worksheet 27). "Think about a recent problem and how you reacted when you had that problem. In the checklist below, tick the signs that apply when you had this problem: I am angry all the time. I get mad faster. I am sad. I don't know what to do. I am confused. I stay by myself. I always want other people around me. I smoke more. I drink more alcohol. I shout more. I go out and do dangerous things…"

[25] For example, these programs assume that individuals hold faulty beliefs that their social context has limited their options which are challenged by exercises in the program. In CHART's module on education and work participants are asked to complete a self-assessment about their job seeking and educational activities, their perceptions about the prospects of getting a job and the barriers to working (Youth Justice, 2009: 103, Worksheet 91). They are then guided through a series of job seeking activities to coach them to overcome "maladaptive" cognitions and to begin actively managing the self. Other activities concerned with "independent living" assume that individuals have deficit planning skills and poor self-control that interfere with finding suitable accommodation, managing finances, and managing conflict with others. A combination of self-assessment and teaching activities are used to steer conduct in alignment with the neo-liberal rational choice actor who plans and takes responsibility for managing their incredibly insufficient Centrelink payment.

[26] See Juvenile Justice (2009: 6-10, Worksheets 5 to 9; (2009: 20-25), Worksheets 18-23).

[27] See Juvenile Justice (2009: 30, Worksheet 28). "Put the problem into words. It is important to be as specific as possible in defining the problem. Then the problem can become a goal. Write a statement that identifies your goal and that explains the obstacle in the way of accomplishing your goals".

[28] See Juvenile Justice (2009: 4-10, Worksheets 3-8).

[29] These include being with anti-social peers, the situational opportunities or stressors linked to the place of the offence, the temporal dimensions that led up to the offence, what the person was doing at the time of the offence, and any justifications or self-explanations for offending.

[30] Foucault (1997: 225) defines a technology of the self as a mode of operation effected by the individual by their own means (or with the help of others) "on their own bodies and souls, thought, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality". In Hörnqvist's (2010: 94-96) account of cognitive behavioural programs in an adult male prison he described the program as operating as a technology of the self because participation is voluntary, appealing to offender's existing aspirations. This criterion is not met in CHART as it is a condition of mandated supervision. They are compelled to attend sessions; however, they can't be forced to participate fully. Day et al. (2004: 260) describe this as "pressured" rehabilitation "in the sense that the decision whether to undertake the program is influenced by negative consequences for non-participation". The choice that is made is one influenced by the consequences of not-participating. In their understanding

being pressured is analogous with coercion. Hörnqvist concedes that in the program he interrogated, there were elements of voluntary participation, individual responsibility, appeals to self-interest and empowerment as well as elements of coercion, imposed objectives, close monitoring and limited competence (2010: 96).

[31] See Worksheet 52 where six self-descriptions about "problematic anger" is presented in a table and the individual is told that if they answered true for any of these descriptions "then your anger is not under sufficient control" (Youth Justice, 2009: 61).

[32] For example, see Worksheets 33-35 that ask the young person to keep a diary about how they spend their time over the week, rate whether they are getting enough sleep, attending school, spending time with friends and family and so on, and then begin planning so that they "have a better balance between sleeping, relaxing" and so on (Youth Justice, 2009: 35-37). In the Worksheets 43-50 they are instructed in what constitutes a health relationship and then asked to identify difficulties they have in their relationships, what skills they may need to develop and then asked to practise these skills (2009: 47-58).

[33] Hörnqvist (2010: 80) refers to the work of Goldstein who developed a "psychotherapy for the poor" given psychotherapy's ineffectiveness in using insights-oriented approaches outside of the middle class.

[34] In a health survey of young people on community orders in NSW the majority scored in the borderline or below average ranges on cognitive and academic tests, indicating difficulties in comprehension, communication and problem-solving using language and numbers (Kenny et al., 2006: 20). It was estimated that somewhere between 8-11% had an intellectual disability (2006: 24); 40% had severe symptoms consistent with clinical Disorder, 19% reported symptoms Conduct Disorder in the severe range, 26% reported symptoms of Substance Abuse Disorder in the severe range, 19% had been diagnosed with attention deficit hyperactivity disorder and 25% had high or very high psychological distress, consistent with an anxiety or depressive disorder (2006: 25-27). In addition, 72% had experienced abuse or neglect (2006: 30).

[35] This is described in Worksheet 41 as being like a fire-drill. "In a fire-drill you know exactly what to do if things go wrong and there is a fire" (Youth Justice, 2009: 43). The relapse plan asks the young person to identify what you will do so they "won't fall back into your old habits", what things they can say to themselves to combat negative thoughts, and who they can call on for support.

[36] Worksheet 40 instructs the young person that a slip is a mistake, a lapse, a detour from their plan, an error, described as "the first instance of backsliding" (Youth Justice, 2009: 42).

[37] The original model of change operates within a therapeutic framework with voluntary adult clients. In describing the model Prochaska and DiClemente (1986: 5-6) reported that between 70 to 80% of people with addictive behaviours relapsed within a year of treatment. They suggested that most people who relapse return to the contemplation stage and may take considerable time before committing to change.

[38] In an evaluation of the Youth Drug and Alcohol Court in NSW it was found that most referrals and participants were at the "contemplation" stage of reediness to change (Eardley et al., 2004: 19). Many of the referrals to the program were not accepted because of the severity of the mental health or behavioural problems of the young people (2004: 11).

[39] See Kenney et al. (2006: 2023). Young people on community orders had a high level of disengagement with schooling that began at an early age. The mean school leaving age was 14 years, 9 months; prior to exiting school 60% truanted regularly, 89% had been suspended, 36% had received special education, 56% were perpetrators of bullying and 30% were victims of bullying.

Chapter Five

[1] In the cognitive schema of meta-analysis, the quantitative evaluation of evidence is considered superior to the conventional narrative review. It has been argued that literature reviews rely upon the reporting of a study's report of statistical significance which may be reported using a variety of measures. As a result of no standard measure, the reviewer cannot assess these variations in effect sizes, subsequently concluding that the literature was "unclear", "mixed", or indicative of no relationship (Edens et al., 2007: 55). The meta-analyst considers this conclusion to be "erroneous", claiming that the meta-analysis can measure the "true population effect size".

[2] There is an inherent tension here as meta-analyses favour published data, leaving a considerable amount of data outside of validation ("the file draw effect") (Rosenthal and DiMatteo, 2001). Unpublished data has been characterized in meta-analyses as being a "moderator" variable that undermines the generalizability of a meta-analysis's determination of effect size.

[3] The most common measures used to estimate effect size are *r*, the Pearson product-moment correlation coefficient, *d*, Cohen's coefficient, and ACU. All measures estimate the magnitude of the relationship across three bandwidths as a measurement of small, medium, and large effect sizes (Rice and Harris, 2005).

[4] The analysis is usually restricted to studies that estimate predictive accuracy using a prospective longitudinal design, that use criteria of recidivism derived from official sources, and that are limited to reports that provide sufficient detail about their methodology and results to be able to calculate an effect size.

[5] The extreme view of this problem is that published papers that demonstrate false positive errors, while file draws "back at the lab" are filled with studies that demonstrate nonsignificant results (Rosenthal, 1979: 638). Rosenthal formulated that it was possible to take this possibility into account by calculating the number of studies averaging null results of these unpublished studies before the overall estimate of effect size is tested for its level of significance. This "tolerance for null results, is then evaluated for whether such a tolerance level is small enough to threaten the overall conclusion" drawn by the meta-analyst.

[6] In the same year Edens et al. (2007) conducted a meta-analytic investigation of the predictive accuracy of the Psychopathy Checklist -Youth Version which is deigned to assess personality characteristics and behaviours of psychopathy in adolescence. It is, strictly speaking, not an actuarial risk assessment instrument, rather it is a diagnostic tool that has been used in clinical practice as a part of risk assessment (Olver et al., 2009: 332).

[7] Lipsey (2003: 70) comments: "meta-analysis is subject to all the problems of model misspecification, unmeasured exogenous variables, and the like that beset all forms of observational data".

[8] Olver et al. (2014: 160) used this algorithm to estimate how many additional studies would be needed to lower the effect size estimate of the study. In that meta-analysis it was estimated that 255 missing studies with a predicted validity correlation of 0 would be required to reduce their estimated size effect (*r* = .30) below Cohen's critical threshold. This heuristic device bolsters the estimate and lends indirect support to all the other variations in the aggregate data used in the meta-analysis (Orwin, 1983: 158). Orwin has argued that it is necessary to develop probability models to estimate the effects of moderator variables other than sampling error Orwin (1983: 158) states: "A shortcoming of […] Rosenthal's (1979) fail-safe *N*, is the absence of a statistical model…Further development of models is warranted, but the complexities of meta-analysis data require consideration of variance besides sampling error". If all variation was attributed to sampling error, there would be no reason to search for moderator variables.

[9] RIOC is an estimate of relative improvement in prediction claimed to be estimated at "maximum possible accuracy", assumed to be "an artefact of the difference between actual offending patterns (base rate) and predicted patterns (selected ration" (Visher, 1986b: 195). Loeber and Dishion used it to conduct a meta-analysis of the current state of research into the prediction of juvenile delinquency to evaluate which predictors then demonstrated good predictive accuracy. Their analysis was confined to male delinquency, where they concluded that the best predictors were the parent's family management and techniques, the child's conduct problems, parental criminality, and the child's poor academic performance.

[10] The seven predictor variables selected in this study were troublesomeness, conduct disorder, acting out, social handicap, convicted parents, low verbal IQ and poor parental child rearing behaviour (Blumstein et al, (1985: 199).

[11] http://gim.unmc.edu/dxtests/roc3.htm (Accessed 23 July 2021)

[12] The optimal cut-off point is defined as "β (beta)…the criterion for predicting (high risk), (to guarantee) that the overall 'costs'[…]will be minimized" by prescribing the appropriate (utilitarian) trade-off between Type I (false alarms) and Type II (misses) errors" (Clear and Barry, 1983: 535).

[13] Clear and Barry (1983: 537) stipulate that: "…the costs and benefits, that is the utilities associated with any combination of a decision alternative and a state of nature be specified numerically. The procedure advocated here…is objective in that it will dutifully incorporate any set of utilities which serve as inputs to

it and prescribe the 'best' decision conditional upon these utilities. The procedure itself is indifferent to whatever subjective values are attached to available options".

[14] For example, see Hannah-Moffat (1999, 2001, 2006, 2009, 2-13, 2015, 2016); Hannah-Moffat and Shaw (2001); Maurutto and Hannah-Moffat, (2006); Hannah-Moffat and O'Malley, 2007; Hannah-Moffat and Maurutto (2003, 2010).

[15] In the case of youth justice in particular, the reliability, psychometric and predictive validity of the YLS/CMI had not been adequately demonstrated, along with several other methodological concerns (Andrews and Bonta, 2003: 4-13).

[16] The deployment of sexuality is completely absent both within the anticipatory codes of actuarial instruments and legislative and policy rationalities in youth justice. Heteronormativity is taken-for-granted. Similarly, the developmental status of the young person in terms of her or his developing brain functioning is absent as part of the assessment criteria, exposing young people as young as 12 years of age to the same intervention requirements as someone aged 17 years. Developmental capacity as a normal part of development is not included as a responsivity consideration, although "communication problems", learning disability, and low intelligence are included as pathological conditions, requiring additional levels and modalities of intervention.

[17] Daly considers that there are several pathways that are discernible among women who become involved in crime. These pathways reflect gendered conditions and circumstances that feminist criminologists assert have not been included in the LSI-R and that subsequently misclassify women's anticipated risk-needs level. In Daly's schema these pathways include: a street women pathway where young women and women have fled abusive homes, become addicts, and use criminal means to survive, a harmed and harming pathway where women are subjected to turbulent, chaotic living conditions that include abuse and/or neglect, and a battered women pathway. Reisig et al (2006: 390-391) included an economically motivated pathway in their pathways modelling.

[18] Smith and her colleagues' title exploit the suggestion that the data expresses the standpoint of women. Meta-analytic findings preclude women's voices and participation in critical debate about risk and need in relation to offender rehabilitation (Morash, 2009: 178). Within the actuarial episteme aggregate data becomes the "truth" because of the recursive way in which data is profiled. It is the sheer weight of the aggregate data that continues to sediment in successive meta-analyses that legitimates the elevated levels of control despite whether particular risk domains discriminate against women.

[19] Taylor and Blanchet (2009: 222-223) criticised Smith et al.'s selection process, as it included 11 unpublished studies, many from the Ottawa network of researchers, and failed to include many the 41 studies included in an earlier meta-analysis by Holtfreder and Cupp (2007) where all of the studies included were published.

[20] Jung used a dichotomous measure of recidivism, reconviction within a six-month follow-up period between 1995 and 1996. She tracked 263 young offenders in Ontario, 81.4% who were on probation, and the remainder who and served time in detention. She found a base recidivism rate of 76% (Jung and Rawanda, 1999: 77). It appears that no measure of predictive accuracy was conducted, although a one-way analysis of variance found that those offenders classified as high-risk were more likely to recidivate, this also holding across all risk domains in the instrument. This is unsurprising given the very high base rate. The raw data indicated that the false positive rate was 36% while the false negative rate was 15%.

[21] See Schwalbe (2008) and Olver et al. (2009). Schwalbe (2008) conducted a meta-analysis that included 20 samples where he calculated 49 effect sizes for male and female offenders. He estimated that the overall effect size was r = .27. He found that predictive validity did not vary significantly by gender (2008: 1376). Olver et al., 2009) found that the YLS/CMI and its variants predicted general recidivism at comparable levels for male, female, Aboriginal, and non-Aboriginal youth (2009: 344). Olver et al. (2014) conducted a further meta-analysis, as they felt the is the gender and ethno-racial neutrality of the YLS/CMI remained unsettled quantitatively. Their meta-analysis included 151 samples, involving 137,931 adult and young offenders where 85.5% were males, 18.9% Black, 5.5% Aboriginal, 2.9% Hispanic 2.9%, and 28% were young people. Their analysis found that while risk scores were elevated for "ethnic minorities", the size effects were relatively small when compared with "nonminorities", except for antisocial pattern (2014: 160, 168). Their findings in relation to gender were more mixed, where males scored significantly higher on the total risk score, prior offences, companions, leisure-recreation, substance abuse, antisocial pattern and attitudes.

Female offenders scored significantly higher on education/employment, family/marital, financial, accommodations, and personality/emotional. It appears that the predictive validity of the instrument varied between minorities and nonminorities, being better at predicting violent rather than general recidivism in ethno-racial groups. Effectively this means that the instruments over-estimate general recidivism in ethno-racial groups. The instruments were better at predicting general recidivism for females compared to males. These differences were not clearly reported and perhaps sidelined as the researchers concluded that "gender and ethnicity were not substantive sources of effect size" (2014: 156). They attributed significant differences to jurisdiction, claiming that the Canadian data consistently demonstrated the largest effect sizes. Their interpretation of this remained speculative where they attributed effect size differences to sources of error in the assessment protocol in other countries, or possible "cultural differences" in the offender population. They immediately rejected this asserting that the central eight risk domains "are found across cultures" and that the LS-CMI developers had "gone to considerable length working with international agencies and operationalising concepts to bring them in line with cultures and criminal codes around the globe" (2014: 170).

[22] When all 47 of the risk items in the YLS/CMI-AA were analysed separately, all but 5 of the items demonstrated significant differences across Indigenous, ethnic and "Australian" categories, while significant differences were found in relation to gendered difference, in relation young women's family and living circumstances (Thompson and McGrath, 2012: 348). Young women scored higher on items related to participation in pro-social activities, displaying tantrum behaviours, verbal aggression, and several items in relation to family and living circumstances, inadequate monitoring by parents, lack of parental control, inappropriate discipline, poor relation with mother/stepmother, and homelessness).

[23] These were family and living circumstances, substance abuse, leisure/recreation, and personality behaviour.

[24] Females and ethnic youth were found to have the lowest rate of recidivism, while white males and Indigenous youth had higher rates, the rate being10% higher for Indigenous young people (Thompson and McGrath, 2012: 350).

[25] Scores between 0-8 were classified as low- risk, 9-22 as moderate-risk, 23-34 as high-risk, and 35-42 as very high-risk.

[26] Using their new norms, they presented data that none of these variables demonstrate statistically significant differences either in terms of the eight risk domains or the total risk score (Hoge and Andrews, 2011: 47).

[27] To achieve this, they proposed that the following technical criteria would make the instrument fair: a series of cut-points need to be established using descriptors such as low, medium, high and very high that reflect the increasing relative risk for all of the sub-groups; these cut-points should be chosen to minimise differential prediction between the common norms and the norms of the sub-groups, rather than between sub-groups; decisions need to be made about whether or not the risk classification score is sufficient for justifying intervention or whether it should be overridden on the basis of social values or priorities; and, risk assessors need ongoing training to fully appreciate the norms of the juvenile offending populations and the needs and special considerations of gender and ethno-racial groups.

[28] Foucault (1977b: 149) makes a quite similar point about the will-to-knowledge: at the interval where it enters the stage of appearance, power relations intensify the struggle to gain durability as a prevailing "species". Often by making inflated and excessive claims, as well as being militaristic in its de-legitimation of competing modes of truth-telling, an emergence is produced through a particular stage of forces" that must constantly wage a battle with oppositional forces that threaten to decompose it. In this phase of arising energies are focused on dividing these forces against themselves to regain strength". The emergence of a species is dependent upon a characterisation of "…durability, uniformity, and simplicity of form…which can prevail in the perpetual struggle against outsiders or the uprising of those it oppresses from within".

[29] Simondon (2017: 141-142) considers that its line of movement is immoderate, lacking control and self-mastery. In this way the YLS/CMI is a means to an end, it becomes a "slave whose purpose is to make other slaves. As such Simondon considers it to be a violation of the sacred.

[30] Rather than defining criminal behaviour as a violation of the criminal code, Andrews and Bonta (2002: 38) define it as "antisocial acts that place the actor at risk of becoming the focus of attention of criminal and juvenile justice professionals". They consider that a psychological definition of crime as antisocial behaviour "is best combined with the broader definition of 'problem behaviour'". The risk profile encoded into the YLS/CMI is focused on the identification of a particular pathological condition – the high-risk, egocentric offender who is at the same time, anti-social and so indifferent to the harms inflicted upon others – and the variations in this criminal propensity. The instrument is founded upon the distribution of abnormality across a pool of risks founded upon a totalizing assumption of an *a priori* (formed) individual, observable in term of intraindividual variations in criminal conduct. As demonstrated in the previous chapter, it doesn't really matter if the young person is classified as either medium- or high-risk, the risk profile ensures that s/he will experience a dense rhizomatic regime of behavioural control, supplemented with cognitive behaviour therapy. The logic aims to prevent the advancement of criminal conduct one way or another.

[31] Andrews and Hoge articulate their ambition in the face of "a monolithic monster devoted exclusively to the promotion of class-based theories of anomie, subculture, labelling and critical/Marxism or to the variations on themes of official punishment embodied within labelling, deterrence, and just deserts theory". They state: "there is a window opening in which full-functioning human persons may be represented in criminological theory and research, represented something more than hypothetical fictions whose only interesting characteristics reflect social location as indexed by age, gender, class, geography, race/ethnicity. By bringing the psychology of human behaviour back into criminology, some of the extremes of punishment and processing themes of current criminal justice may come to be viewed as the natural products of any 'truly social theory' that denied psychology".

[32] Simondon considers homeostasis as a finality as being a danger that is coextensive with technicity, as it limits the evolution of the technical object: "The danger of technicism rears its head (when a technical object is reduced) to a problem of regulation, and presenting as the only ideal, homeostasis, that is stable equilibrium of attendant forces" (Coombes, 2013: 60).

[33] This is described by Simondon (2020: 268) as being an inversion of the differential polarity: "In certain cases, it can also be inverted: one aspect of defeatist behaviour is the general negativism of subsequent behaviour…all spontaneous movements are refused and transformed into their opposite. Situations are grasped backward and read in reverse".

[34] Simondon (2020: 261) comments: "Every time the tension of the system cannot be resolved into a structure, into an organisation of the subject's polarity and the object's polarity, an uneasiness remains that habit is hard pressed to destroy, even if every threat has been removed". Simondon considers anxiety as being a feeling and emotion where the subject feels negated in the face of an encounter with disparate forces that pose a threat to an already individuated mode of being (2020: 282). It is speculative, however the resistance of the Ottawans to modify the form and content of the YLS/CMI may be indicative of an anxiety that continues to negate new lines of technical individualisation. As an emotion anxiety blocks action, and as a feeling it interferes with perception (2020: 283). The presence of alternate perceptual gradients aggravates the subject who begins to universalise the world as if being and one are the same. In this way the "subject becomes object, but as an object as important as itself" (2020: 283). This affective state results in a recoiling from the power to be affected as the subject becomes the world, where it seems as if there is not a problem that is not the problem of the subject. Suspended in this state, the subject remains unable to incorporate new differentials where attempts may be made to actively expel these relational forces.

Chapter Six

[1] See https://www.justice.nsw.gov.au (Accessed 10 July 2022). BOCSAR was established in 1969 and remains a key stakeholder in NSW's criminal justice political economy. It is a statistical and research agency that analyses and disseminates information about the distribution and frequency of crime, the factors that influence this, the factors that affect the effectiveness, efficiency, and equity of the NSW criminal justice system, as well as analysing crime and justice trends.

[2] This research includes: Luke and Lind (2002); Chen et al. (2005); Vignaendra and Fitzgerald, 2006, Weatherburn et al., (2007); Weatherburn et al. (2009); Smith (2010); Lind (2011); Smith and Weatherburn (2012); McGrath and Weatherburn (2012); Agnew-Pauley and Holmes (2015); Poynton and Menendez (2015); Ringland et al. (2015); Nelson (2015), Payne and Weatherburn (2015); Ringland (2016); Nelson (2017); Wang and Weatherburn (2018); Yeong (2021); Ooi and Rahman (2022); and Klauzner et al. (2022).

[3] This was evident in the State Plan's strategies aimed at more extensive community monitoring of high-risk offenders, sharing risk information across agencies to target these offenders, early intervention with young offenders at their first point of contact with the criminal justice system, tracking offenders to determine the rate of re-offending within 12 months and profile the seriousness and frequency of offending, and targeting medium- to high-risk offenders in both the community and custody to reduce the risk of re-offending (NSW Government, 2006: 29-31).

[4] Wolfgang et al. (1972: 253-255) recommended: "One answer would be that the best time [to act] is that point beyond which the natural loss rate, or probability of desistence, begins to level off. Because 46% of the delinquents stop after the first offense, a major treatment program at this point would seem to be wasteful. We could even suggest that intervention be held in abeyance until the commission of the third offence, for an additional 35% of the second-time offenders desist from then on. Thus, we could reduce the number of boys requiring attention in this cohort from 3,475 after the first offence to 1,862 after the second offence, to 1,212 after the third offence, rather than concentrating on all 9,945 or some other large subgroup […] under some blanket community action program. Beyond the third offense, the desistance probabilities level off".

[5] Wolfgang et al. had found that 35% of males up until the age of 18 participated in crime, where 46% committed only one offence, 54% committed two or more offences; "chronic offenders" (who committed five or more offences) accounted for 18% of all offenders (1972: 54, 248).

[6] Coumarelos restricted her pattern analysis to three variables: age at first proven offence, the seriousness of the number of re-appearances in court and was unable to establish any statistically significant relationships (1994: 12-21). She calculated cost effectiveness in terms of the relative costs and savings of intervening at each successive court re-appearance.

[7] This echoes the US penal strategy that was advanced in the 1920's and 1980s to channel low-risk adult offenders away from prison, while incapacitating high-risk offenders albeit in a policy environment that considered detention to be the last resort. In NSW, youth policy did not support incapacitation except as a last resort, then having no clear rationale about how to "intervene" with high-risk offenders in the community.

[8] The researchers sampled 590 first-time offenders who attended a conference and 3,830 first-time offenders who had a proven outcome in the court captured between April 1998 and 1999 (Luke and Lind, 2002: 3). The sample was tracked up until the 30 June 2001 where the follow-up period ranged from 27 to 39 months. They measured recidivism by recording the number of days to first reappearance (at court or a conference and the number of re-appearances per year during the follow-up period. They excluded re-offences that occurred over the age of 18 years as well as any other form of offending (e.g., an offence sanctioned by a warning or caution). The research design was highly flawed and would underestimate the rate of re-offending.

[9] This was measured as being as a re-appearance in either the Children's Court or an adult court. It was assumed that the index offence (the first recorded transaction with the criminal justice system) evidences the beginning of a criminal career of indeterminate duration.

[10] The researchers tracked a cohort of 5,476 young offenders aged between 10 and 18 years for roughly eight years from the time of their first appearance in the Children's Court between 1995 and 2003. This is the longest time frame used by the Bureau in its cross-sectional research designs. There are some important contingencies that moderate this dataset: offenders were tracked over variable time intervals, the sample includes young people who were convicted prior to the introduction of the YOA, and the criterion measure of recidivism was limited to official court data.

[11] Weatherburn and his colleagues have been insistent in claiming that Indigenous people are over-represented in the criminal justice system because they commit more serious offences, re-offend more frequently and more frequently breach non-custodial sanctions (Weatherburn et al., 2003; Snowball and

Weatherburn, 2007: 287). Indigeneity is treated by the Bureau's researchers as a static risk factor (see Stavrou and Poynton, 2016: 1), occluding the structural and other contextual relations that contribute to Indigenous over-representation and elevated scores in these risk probability models (see Cunneen, 2006; Rugge, 2006; Yassine, 2019). If Indigenous people are subject to systemic racism that results in their over-representation in the criminal justice system, then this bias undermines the assumption made in probability models that Indigeneity is a random factor.

[12] Luke and Lind's (2002) evaluation became the target of critique by other researchers at the Bureau in relation to its methodological design where it was argued that this resulted in under-estimates of the recidivism rate. Eventually this publication was removed from the Bureau's website as its findings were contrary to the Bureau's accumulating knowledge about recidivism.

[13] There were 3,709 young people in this cohort (Smith and Jones, 2008a: 2). This cohort was not representative of all young offenders in NSW as it excludes those given warnings or issued a formal caution. By reporting the total rate of recidivism across these two technologies of punishment, it is not possible to accurately determine whether the recidivism rates differ between YJC's and court.

[14] On the affectivo-emotive relational level there is a polarity in terms of two primary emotions involving the acceptance (taking in, incorporating) and the rejection (expelling) of the object under scrutiny and problematisation that is interjected into collective relations (TenHouten, 2007: 17). In the line of technical individualisation taken by the Bureau's researchers this polarising relation was frequently expressed by detailed criticisms of research methodologies that supported the effectiveness of youth diversion, criticisms about the shortcomings of youth justice policy and the *Young Offenders Act*, as well as the intensity of energy used to mobilise change in the youth justice milieu. Simondon (2020: 261) supposes that perception is a corporeal schema of a subject in a situation deeply infused with polarising emotions such as fear or sympathy. Perception grasps the form of the object and its orientation within the milieu. As such it generates a tension that produces a segregation of perceptual units and the discovery of the polarity of these units.

[15] These factors included age at index court appearance, gender, Indigenous status, Non-English speaking background of parents, one or both parents deceased, divorced or separated parents, non-attendance at school at the time of the index offence, a record of school expulsion or suspension, family trauma, drug usage, residential stability, committing offence with anti-social peers or associated with anti-social peers, confirmed case of neglect or abuse prior to index court appearance, being in OOHC prior to the index court appearance, Year 3 basic numeracy skills test score, principal index offence, and criminal history (included police cautions, referrals to YJCs and court appearances) (Weatherburn et al., 2007: 4-5). The researchers were critical of prior research arguing that its selection of risk variables was too limited. Their selection of risk codes was practical considerations with gathering data from other governmental organisations and prior reviews of research about the predictors of juvenile re-offending.

[16] The researchers used a construction sample of 392 young offenders on community supervision orders in 2000/2001 . In that financial year there were 457 young offenders placed on these orders; poor data recording reduced the sample size to 86% of the sample.

[17] There is a degree of obfuscation in reporting the relations between these variables and recidivism, as cross-tabulation tables were provided that reported 10 significant or "nearly significant" relations, although a number of these, including the relation between age and re-offending, were not significant (Weatherburn et al., 2007: 6-7). The data is presented using a series of tables to focus the reader's attention on these facts where it is difficult for the reader to discern which variable demonstrates a significant relation with recidivism.

[18] In Cottle et al.'s (2001) meta-analysis of the predictors of juvenile recidivism age at first commitment, age at first contact with the law and nonsevere pathology were found to demonstrate the greatest effect-size of their standardised measure of recidivism. In this study (Weatherburn et al, 2007) and the prior research that tracked reoffending into adulthood (Chen et al., 2005: 4-5) the Bureau's researchers had been unable to find a statistically significant correlation between being 10-14 years old and recidivism.

[19] The probability model was validated using the same construction sample using a c-statistic "associated with the ROC curve" to test the predictive accuracy (c = .763) indicating that the model demonstrated "an acceptable" level of accuracy (at the lowest threshold level of predictive accuracy for that test – see Smith and Jones, 2008: 10-11). This is unsurprising given the high baseline rate of recidivism which over-estimated

rates of juvenile recidivism because of its selection of a cohort of court-mandated offenders rather than a representative sample of young people who have been diverted from the courts.

[20] Thirteen variables were included in the anticipatory pattern analysis: age at the date of the index caution, age at first caution, gender, Indigenous status, whether the index caution was issued by the police or court, offence type, seriousness of the principal offence, the total number of previous cautions, YJCs or court appearances, the number of cautions, the number of YJCs and the number of proven court appearances, the offence type for the most serious offence at any caution, YJC or proven court appearance in three years after the caution, whether the young person had been cautioned, conferenced or convicted for a violent offence, socioeconomic disadvantage, and remoteness (Lind, 2011: 2). There is an incredible amount of overlapping data included in the experimental pattern analysis.

[21] The data tracks re-offending for three years from the "index caution" rather than from the "index offence", undermining any coherent research design for predicting recidivism. The index caution is indistinguishable from the young person's criminal history – they may have been cautioned more than once in the sampling period and their criminal history may span back further.

[22] It is difficult to determine what the c-statistic was, it is not clearly stated. It appears to be somewhere around 0.767 (Lind, 2011: 9). It appears that the device had a high "miss rate" that predicted a low risk of re-offending, however these young people re-offended (2011: 9). If this was the case, then the measure of predictive accuracy was in the lower range of "acceptability" using the Hosmer and Lemshaw (2000) test like the previous feasibility study conducted by Wealtherburn et al. (2007). The device had a lower "false alarm" rate that predicted a high level of risk, but the young person did not reoffend. These errors were described as a "trade-off" that needed to be considered in establishing the classification rules for scoring the screening device.

[23] The earliest references to the precautionary principle were articulated in Germany's environmental protection legislation in 1971, which then spread to legal systems in other European countries (Andorno, 2004: 3; Aradau and Van Munster, 2007; 2008). At the Rio Summit in 1992 it was recognised as the tenth major principle concerned with "preventing serious or irreversible deterioration of the environment by a modification of the production, of the sale or use of products, of services or types of businesses, and this is in accordance with a scientific and technical standard" (Ewald, 2002: 283) In the same year the principle was incorporated into the Maastricht Treaty on the European Union as one of the pillars of environmental law, along with the principles that preventative action should be taken, environmental damage should be rectified at its source and that the polluter should pay. The principle can be formulated as follows: "in accordance with which the absence of certainty, taking into account the state of scientific and technical knowledge, (community policy) must not postpone the adoption of effective and proportionate measures to prevent serious and irreversible damage to the environment at an acceptable cost" (Ewald, 2002: 283). The precautionary principle applies to forms of decision-making in situations that have two key features: a scientific context of uncertainty and the possibility of serious and irreversible damage. According to Ewald (2002: 284) a possible harm or injury is understood as being irreparable, irremediable, not compensable, and unpardonable. It registers on the collective level as being catastrophic "in the context of victims who are no longer satisfied with compensation…but who are only satisfied when those responsible are held criminally liable". The precautionary principle upsets the postulates of an insurance-based society that spreads and compensates risk at the collective level, becoming concerned with preventing, forbidding, sanctioning, and punishing (2002: 285).

[24] Precaution focuses "on the uncertainty of the relationship of causality between action and its effects" (Ewald, 2002: 286) In the context of the relativity of scientific knowledge, precaution requires decision-makers to consider "what one can only imagine, suspect, presume or fear".

[25] If an attitude of prudence should be adopted in terms of scientific-technical criteria (or by economic criteria), the decision-maker is asked to expect the worse, while taking measures that are limited in the face of uncertainty. Ewald considers that the security measure adopted is placed in suspense as "one must envisage the non-assessable of the irreversible" (Ewald, 2002: 286). In the context of actuarial prediction and risk prevention, precautionary measures enable the actuarial enterprise to "develop" in a sustainable way mediating the prohibition against action and any attempt to limit the intervention's harmful consequences.

[26] A host of methodological difficulties were highlighted: failure to adjust for manifest differences between treatment and control groups, failure to analyse data because of intention-to-treat, small sample sizes, inappropriate statistical methods, a restrictive definition of re-offending, and failure to adjust for time at risk of re-offending (see Smith and Weatherburn, 2012: 2-6).

[27] In this affective state the subject (that is, the grouped thought and actions of the Bureau's researchers) feels aggravated by exteriorised relations that oppose or undermine its valorised position about YJCs. Simondon (2020: 283) suggests that in this kind of emotional state "it could be said that the subject becomes world and fills all this space and time in which problems emerge". Charged in this way, "there is no longer a world nor problem that is not a problem of the subject". The subject becomes a polarising "counter-subject" that universalises all differential matter and relations that oppose it. This is evident in the polarising relations between Smith and Weatherburn's (2012: 2-6) insistence that YJCs are ineffective and research findings that lend support to its efficacy. In their review of this literature, they repeatedly dismissed research findings by discrediting the methodology or by making speculative claims that dismissed the findings: "the police may have been "cherry picking" low risk juveniles (to YJCs" (2012: 3), "the comparison process would be biased in favour of the conference group in ways not necessarily captures by factors controlled for in the study" (2012: 5).

[28] The qualitative dimensions of the restorative justice process itself are bracketed-out of their evaluative process. Ignoring the aims and processes of YJCs imposes significant limits on the evaluative process itself. Subsequently this provides policy makers and JJ administrators with no assistance with how conferencing is meeting all the principles and purposes outlined in s. 34 of the *YOC*, nor of how these practices could be improved.

[29] It is evident that members of the Bureau had lobbied the Advisory Committee of the Review of the YOA and the CCPA where the consultation paper noted that there was an evaluation of youth justice conferencing being carried out by BOCSAR (DAGJ, 2011: 3).

[30] The eligibility and propensity scoring criteria used in this study reduced the sample size of the two comparisons from 1,399 young people conferenced in 2007 to 981 and from 7,591 court records to 918 young people for matching the two samples, and down; weighting the two groups reduced the sample size overall (3,201 Smith and Weatherburn, 2012: 7-8, 13). This elaborate statistical control technique does not alter the basic protocol for measuring levels of recidivism; rather, it wards of any alternative interpretation of the data associated with social forces that undermine the ontological assumption that criminal recidivism is explained solely in terms of individual differences. Ironically this introduces new lines of selection bias into the measurement of recidivism, significantly curtailing any accurate profiling of recidivism for either sanction.

[31] The use the inflammatory signifier "dogma" is an active mode of verbal attack aimed at rejecting or undermining key elements of legal and policy infrastructure of youth justice.

[32] The paper remains largely indifferent to the rationales behind YJCs, focusing on undermining prior evaluations (Weatherburn et al., 2012: 759-799) and making vague claims about the lack of evidence to support that court sanctioning is iatrogenic. This is the same line of attack deployed in Smith and Weatherburn's (2012) evaluation of prior evaluations of YJCs worldwide. All research was inferior in one way or another because of small sample sizes, selection bias, selective attrition, ambiguous comparison groups, and unwarranted conclusions (Weatherburn et al., 2012: 799). While public identification as an offender could impair life opportunities such as employment and marginalise "offenders into similarly deviant peer groups", this might also be a "selection effect" (that is, a consequence of the individual's criminal propensity); court sanctioning might produce the internalisation of a stigmatising identity, but this might be a consequence of criminal propensity (see 2012: 793-795).

[33] Simondon (2020: 335) comments: "The man who believes defends himself, or he wants to change groups and is in disharmony with other individuals or with himself". For Simondon, beliefs are easy to manifest, project and grasp; however, beliefs are limits to individuation, they only have a provisional value that is compensatory, consolidating, or reparative.

[34] Weatherburn et al. (2012: 806) make the claim: "Indeed, failure to ensure that all young offenders at significant risk of reoffending are offered a place in an effective rehabilitation program not only puts the community at unnecessary risk, but also means that the number of young people ending up in custody

remains higher than it needs be, with all the attendant psychological damage, stress and hardship this entails".

[35] The consultation paper began by asking for stakeholder input about two broad questions: does the NSW legislative framework take the right approach to offending by children and young people? And are there other models taken by other jurisdictions that this review should consider? (DAGJ, 2011: 10). The consultation asked a series of quite extensive questions about the aims, principles, and operations of both the YOA and the *CCPA* and whether the two pieces of legislation should be consolidated. Most submissions addressed these questions.

[36] It is evident that the Bureau's ongoing work about the early identification of persistent offenders had germinated in the state's review of the youth justice legislation in NSW. In the opening page of the consultation paper about the legislative review, it was stated that "those who are apprehended tend to be the more persistent of offenders" (DAGJ, 2011: 4). The Bureau's research on recidivism is used to support this claim. The persistent offender is contrasted with the transient or adolescent-limited offender (see Moffit, 1993) as having "histories of neglect, low levels of educational attainment, histories of substance abuse and a tendency towards acts of physical aggression" (2011: 4).

[37] "The critical issue in considering what constraints to impose on the giving of warnings or cautions is not so much the current offence but the offender's history of offending…Given the importance of early intervention, it would seem prudent to impose a general restriction on the total number of warnings and cautions a juvenile offender may receive. Without foreclosing debate on the issue, a useful starting point for discussion would be a limit of three warnings or cautions within five years" (BOCSAR, 2011: 6).

[38] NSW Government committed to increasing the use of YJCs in the JJ milieu while intensifying the use of court-based diversionary programs and alternative sentencing options for adult offenders This included developing a cost-effective model for Forum Sentencing, establishing a third adult Drug Court, and new initiatives to meet minimum standards for addressing men's domestic violence (DAGJ, 2013: 7). Diversion from detention using the Youth Drug Court was abandoned in July 2012 as it was considered as not being cost-effective due to the low number of graduates and high levels of recidivism.

[39] The annual report for 2012-13 claimed that 63% of young offenders under community supervision had "a reduced YLSI" risk score. This provides very weak evidence that risk case management is effective, while avoiding reporting actual recidivism levels if these young people were tracked for an adequate follow-up period. Key service measures continued to incorporate output measures such as the number of reports and assessments completed for young people appearing at court, the number of community-based orders commencing, the number of young people on community supervision, and the number of hours of community work allocated to young offenders (DAGJ, 2013: 43).

[40] NSW Communities and Justice (n.d) *Youth on Track referrer factsheet,* http://www.youthontrack.justice.nsw.gov.au/Documents/youth-on-track-referrer-fact-sheet-2020.pdf (Accessed 15 July 2022).

[41] YOT was initially delivered at Blacktown, Newcastle City and Mid North Coast Police Area Commands.

[42] On 2 February 2015 YOT was expanded to include Manning Great lakes, Lake Macquarie, Port Stephens, Mount Druitt, and Quaker's Hill Police Area Commands. In December 2016 this was expanded to include Central West, Coffs Harbour, and New England Police Area Commands. In 2019 Riverina Police District was also incorporated into the program (Klauzner et al., 2022: 3).

[43] GRAM is a static risk assessment tool that has been developed by the Bureau's researchers for use in adult and youth justice settings (Smith and Jones, 2008a, b). These instruments predict re-offending within 24 months of an index offence based on supposed individual-level static risk factors including age, gender, Indigenous status, prior criminal history, and current offences (Stavrou and Poynton, 2016: 1). The rationale behind this risk modelling was adapted from the UK Home Office's Offender Group Reconviction Scale (Copas and Marshall, 1998) who developed prediction instruments for adult and juvenile offenders separately. It was rationalised that these instruments could be used as an audit mechanism to estimate "what the reconviction rate should be" based on a profile of offenders coming before the court system and then "compare the predicted to the observed reconviction rate" (Smith and Jones, 2008a: 2). This data could be used to evaluate the effectiveness of correctional policies. The GRAM instrument that was developed for use with young offenders tracked recidivism for two years for all young people convicted in

an NSW court or dealt with at a YJC in 2002 (N = 3,709) prior to the formal introduction of the YLS/CMI-AA into NSW. The sample data failed to include warnings or cautions and was not a representative sample of young offenders. Like the Bureau's prior screening instruments, GRAM's predictive efficacy was c = 7.50 at the lower end of an "acceptable" level of fit to the data. Smith and Jones (2008a: 8) claimed that the instrument was able "to adequately discriminate recidivist from non-recidivist offenders".

[44] Juvenile Justice appointed a risk screening officer to work in NSW Police to identify all young people who have had police contact within the past 24 hours in the Local area Commands that YOT operates in and notify the regional co-ordinator of the program so that contact can be made with the young person (Trimboli, 2019: 2). Within 3 days of referral, the YOT provider attempts to contact the young person and his or her family using local agencies to track down their location.

[45] In 2010 Smith published discordant recidivism data using the Bureau's GRAM prediction model for estimating annual recidivism levels for young offenders and data that included police cautions recorded since 1998. This study demonstrates the contingency of any estimate of recidivism. GRAM's estimates of recidivism in 2006-07 were lower than Smith's estimates primarily because the GRAM probability model did not include police cautions (Smith, 2010: 4). This same situation applies in relation to police warnings. It was not possible to include police warnings in estimates of recidivism until 2010 when this data was incorporated into ROD. Data from 2010 indicates that the police arrested and sent more young people to court (7,579) than any other available diversionary option. Cautioning was the next most frequent sanction (10,196), then warnings (4,619) while only referring 584 young people to YJC's (DAGJ, 2011: 12, Table 3). It is evident in the Bureau's publications that researchers had the impression that the number of police cautions and YJCs given to young people was higher than might be expected. Moore (2012: 1) comments: "despite the fact that there is a great deal of interest in the YOA, little is known regarding the proportion of young people receiving multiple police cautions and YJCs".

[46] Those young people with a predicted 60-70% chance of re-offending in 24 months are classified as having a "moderate to high risk", while those with a score over 70% are classified as having a "high-risk" (Trimboli, 2019: 17 *fn*2. Each day the risk screening officer identifies all relevant young people who have had police contact within the past 24 hours in the LACs where YOT is operating and notifies the regional co-ordinator of the program so that contact can be made with the child or young person (Trimboli, 2019: 2).

[47] The child or young person must have received at least one formal police contact and have risk factors including truancy, child at-risk reports, substance abuse, mental health issues, association with peers involved with the police, family history of domestic violence, and lower than normal cognitive and academic ability (2019: 2).

[48] Family intervention programs link to the anticipated risks coded into the YLS/CMI-AA in relation to family and living circumstances including inadequate parental monitoring of the child, difficulties controlling behaviour, poor maternal and/or paternal relations, and anti-social values in the family (Hoge and Andrews, 2011). One of these intervention programs is the Collaborative Family Practice for Family Intervention developed by Trotter (2013). This program was not designed for working with Indigenous families and kin; rather, it uses a six-step problem-solving model that establishes family goals about what they would like to see change, explore the issues in depth, and develop strategies for achieving set gaols (Trotter et al., 2020: 270).

[49] These programs are designed to support young people to continue or re-engage with primary or secondary school. Interventions are incorporated to address behavioural, emotional, or cognitive issues that have exacerbated participation in schooling (Trimboli, 2019: 4) In addition, YOT case managers may refer young people to TAFE or community colleges or to alternative schools.

[50] Referrals or brokerage is used to find accommodation, assistance with job applications and employment support, drug and alcohol services, detoxification or residential treatment, counselling support, anger management programs, money management, legal services, recreation, and cultural support programs (Trimboli, 2019: 4-5).

[51] In addition to disclosures about child abuse or neglect (where child protection concerns must be reported to FACS), the case manager may become aware that a client has breached bail conditions or the conditions of an Apprehended Domestic or Personal Violence Order or Family Law Order. Indictable offences must immediately be reported to the police, and detailed disclosures of the intent to commit an offence that are

likely to lead to the risk of harm to the young person or others must also be reported to the police immediately (NSW Government, Juvenile Justice (2018: 35).

Chapter Seven

[1] See Hannaj-Moffat and Maurutto (2003); Harcourt (2007); Moore and Padavic (2011); Martell et al. (2011); Guy et al. (2014); Taxman and Coud, (2015); Hannah-Moffat (2016); van Eljk (2017); Yassine (2019).

[2] The YLS/CMI 2.0 is marketed as being gender-informed, culturally sensitive, and strengths-focused. https://storefront.mhs.com/collections/yls-cmi-2-0 (Accessed 5 October 2022)

[3] Bonta et al. (1997: 138) concluded that their risk/need instrument demonstrated predictive validity among Aboriginal offenders, claiming that this "implies that many of the risk measures by the items (e.g., substance abuse, employment) are the same for Aboriginal offenders as they are for non-Aboriginal offenders". However, their data found that the Aboriginal offenders in their sample significantly differed "on almost all the personal demographic and criminal history variables" (1997: 133). Aboriginal offenders were less likely to be male, more likely to be unemployed, were less educated, more likely to have histories of prior convictions, probation breaches and convictions for violent crime. When the items were correlated with recidivism levels, family/marital, mental ability and academic/vocational factors did not predict recidivism for Aboriginal offenders (1997: 135).

[4] Yassine (2019: 142) contends: "The overrepresentation of "boys" and "men" in the penal system can remain out of focus, and so nothing is done to dislodge the naturalising of 'boys as offenders'. In turn, risk assessment tools are not gender-blind, but rather, allow 'girls' to be represented as being 'just as risky' as 'boys'".

[5] Anthony et al. (2021: 2) have criticised the Federal Government for relying on the Deloitte report to defend its implementation of the recommendations made in RCIADIC, thus limiting any further substantive action that would combat the growing disparities for First Nations people in the criminal justice system. The review used a desktop methodology that summarises governmental actions, without considering whether these actions have continued or reversed later (2021: 6). The review did not analyse the relevance of the actions identified to RCIADIC's recommendations and failed to obtain the views of First Nations people. Anthony et al argue that the review needed to conduct an analysis that considered three core evaluative parameters: reducing the rate of incarceration, increasing the safety of First nations people in custody, and advancing First Nations self-determination.

[6] This cultural respect training package and a revised Indigenous recruitment strategy aimed to "make sure our services and programs respond to the needs of Aboriginal clients and staff by recruiting Aboriginal and Torres Strait staff" into designated positions (DAGJ, 2012: 9). The recruitment strategy aimed at increasing the number of Indigenous staff acting in higher positions and transitioning between community positions, positions in detention and senior administrative positions in central office (JJ NSW, 2016: 23). In 2018 an Aboriginal Employee Lifestyle Model was developed to "strengthen practice in relation to recruitment, development, promotions, support and retention of aboriginal employees" (NSW Government, 2018: 24).

[7] The possibilities for culturally appropriate offender programs were limited to the Department's funding for community-based programs. Greater emphasis was placed on reviewing whether existing services met the needs of Indigenous young people than developing culturally appropriate plans (DJJ, 2001: 5). The key "culturally appropriate" programs in operation at that time were Aboriginal mentoring programs, a bail hostel to divert Indigenous young people from remand, Indigenous youth services to provide offender programs for Indigenous young people on community-based orders in alignment with their risk case management plans and programs to provide culturally appropriate education, training, and work-based learning (2001: 26-27). Over time, Indigenous young people were referred to cultural camps and cultural resiliency programs to strengthen their connection to Country and traditional cultural practices and connections with community (see JJ, 2011: 4).

[8] This was premised on recognition of the rights of First nation peoples to exercise their practices, languages, and traditions, the diversity of Indigenous peoples; the recognition of the impact of *past* colonial policies; and the recognition of culturally specific "needs" that need to be incorporated into the design, development and implementation of policies and programs (JJ, 2011: 2, my emphasis). Consultation with

Indigenous people and staff in the development and implementation of policies and programs, including all casework practices and policy procedures; and working with Indigenous communities to "deliver quality outcomes for Aboriginal and Torres Strait Islander young people.

[9] After a summit of key Aboriginal and Torres Strait Islander organisations in 1997 Aboriginal Justice Agreements (AJAs) were adopted in four of Australia's states and one of its Territories between 2000 and 2010. AJAs are a formal agreement between governments and First Nations to work together to improve justice outcomes. They deploy a state-driven managerialist strategic planning process to establish joint objectives across departments and agencies and work in partnership with Indigenous communities to realise these objectives (Australian Law Reform Commission, 2017). The first and only AJA was established in NSW in 2003 (Aboriginal Justice Advisory Council/NSW Attorney General). In 2005 an extensive ten-year Aboriginal justice Plan began implementation that ceased operation before being fully implemented. Its core priorities were reducing the number of Indigenous people who come into contact with the criminal justice system as offenders and victims, improving the quality of services for Indigenous peoples, and developing safer communities (NSW Aboriginal Justice Advisory Council, 2003b: 8).

[10] Key performance indicators included increasing the number of risk assessments for Indigenous young people in detention and community-based orders, increasing referrals to post-release programs, increasing the participation rate in culturally specific programs, and increasing participation in Intensive Supervision programs (JJ, 2011: 4-5).

[11] In the period between February 2015 and January 2021 there were only 151 young people referred to the YKC at Parramatta and Surry Hills (Ooi and Rahman, 2022: 6).

[12] The architectural reconfiguration of the traditional court hearing is modelled on the first Indigenous sentencing court developed in the South Australian Nunga Court established in 1999 (Marchetti and Daly, 2007: 430). NSW's Indigenous sentencing courts for adults were initially established in 2002 and are modelled on the Canadian circle court model (Potas et al., 2003). The courts operate in venues that are culturally significant to local Indigenous communities, where participants sit in a circle. Victims are involved in circle courts, and Elders have a greater degree of participation in the framing of the penalty imposed on an offender.

[13] Establishing the plan involves revisiting the issues identified at the time of screening and other issues raised by a legal health check as identified by the Civil Law Aide lawyers as well as incorporating any new issues that have arisen, including new information that becomes evident because of further questioning by the professionals present at the conference (Williams et al., 2018: 60, 93-94). The onus of responsibility is placed on the young person whose life circumstances are quite precarious. Williams et al. (2018: 93) describe the Indigenous young people who participate in the program as having "difficult and stressful lives: they may have had few opportunities to connect with their mob and their Aboriginal heritage, missed out on educational opportunities, found it difficult to get a job, experienced violence at home, attempted self-harm, live in unsuitable housing, have accumulated debts, or have major health or disability issues" (see 2018: 101-115) for a more granular account of these circumstances. The magistrate reinforces the responsibilisation of the young person: "The action is you, the support is us" (2018: 60).

[14] In the discourse used by the evaluators of the YKC in Parramatta, the framing of the plans and the issues they raise acknowledged cultural disconnection in terms of the Stolen Generations; however, the primary discourse was "a story of disadvantage, exclusion and hardship, mixed in disorganisation and poor decisions" (Williams et al., 2018: 100).

[15] Ooi and Rachman (2020: 12) found that 23.5% of the YKC participants were sentenced to detention compared to 14.6% in the matched control group. Within 12 months of sentencing 63.2% of graduates from the program re-offended, although this was slightly better than the control group and slightly lessened the likelihood of being sentenced to detention.

[16] Participants are required to attend anywhere between 6 and 12 case review meetings at court to adjust elements of the case plan, vary bail, adjust curfews, and return the young person to detention if necessary. After a final review meeting, sentencing occurs as the magistrate re-enters from their chambers robed and sentences the young person from the bench in the same way as the Children's Court does using the *Children's (Criminal Proceedings) Act, 1987* (Williams et al., 2018: 61). The enrolment of First Nations elders, community leaders and other First Nations authorities into the YKC establishes a complicated relation where they become agents who perform court worker duties, lending support to the legitimacy of the

Western criminal justice system (Blagg and Anthony, 2019: 263, 269). While the YKC can be considered as being "culturally congruent", it operates as an instrument of settler colonialism that attempts to facilitate greater trust between members of First Nations communities and "white justice" (see Marchetti and Daly, 2007). At the same time the court is provided information about First Nations young people that would otherwise not be available to settlers (Briggs, 2020: 72).

[17] The use of tactics such as participation and recognition in the Children's Court are a way of gaining First Nations peoples consent within the settler colonial criminal justice system (Simpson, 2017). Simpson describes these tactics as "legal tricks" that are Founded in a "forgetting that the state's very being creates problems that [First Nations people] must manage" (2017: 22). At the same time this promotes an image of justice or rights entitlement that "diminish the authority and sovereignty […] of robust political orders" (2017: 29).

[18] The Committee was asked to consider youth diversion in relation to police, juvenile justice, community corrections, the courts, health, housing and children's services, schools and educational authorities and non-government organisations and the local community. In addition, it considered Aboriginal over-representation in JJ, evaluation of outcomes and the identification of areas of improvement, staff capacity and training, case management, bail, and the experience of other jurisdictions (LA CLS, 2018: 197).

[19] Email communication, Geoff Provost MP 30 July 2012. Provost was the Chair of the Parliamentary Inquiry into the adequacy of youth diversionary programs in NSW.

[20] "During its inquiry, many stakeholders told the Committee that young people's access to diversionary options varies across the State, with those who have committed an offence in a regional, rural or remote area much less likely to be diverted from the criminal justice system than those who have committed an offence in a metropolitan area" (LA LSC, 2018: 57). This was determined to be a function of differential policing across areas where police were more likely to charge a young person rather than use the *YOA*, the lower rates of diversion from local courts where there was no specialist Children's Court, and the scarcity of youth diversionary schemes and/or the poor quality of service provision.

[21] The Committee only made two "findings" in their inquiry here: "Aboriginal people are over-represented in the juvenile justice system" (LA LSC, 2018: 155), and "Clean Slate Without Prejudice and Breaking Barriers in Mount Druitt have received positive feedback as effective and culturally appropriate programs for young Aboriginal people" (2018: 169). In discussing the statistics that evidenced the disparity in relation to police data that indicated 634.5% of Indigenous young people young people were more likely to be proceeded against at court compared to 35.5% in 2016, the Committee commented that "this is of particular concern" given s. 7 (h) of the *YOA* that establishes the use of police warnings, cautions and referral to YJCs as mechanisms for reducing over-representation. It was commented that "this highlights the need to understand the problem thoroughly so it might be responded to effectively", a statement that received no further attention in the inquiry.

[22] The Ngudjoong Billa Aboriginal Reintegration and Transition Program operates through South Coast medical Service Aboriginal Corporation where only 36 referrals can be admitted into the 20 weeks of support provided. The other program operates in Dubbo as a bail support program that employs Indigenous staff to and volunteers to assist young Indigenous offenders to comply with bail conditions (Communities and Justice, 2018). In addition to these programs the LA LSC (2018: 169-170) identified two other police initiatives operating in Redfern (Clean Slate Without Prejudice) and in Mount Druitt (Breaking Barriers) that have built positive relationships with Indigenous community leaders to promote pro-social recreational activities (e.g., early morning boxing), interventions to reduce the risks of reo-offending (behavioural workshops), along with mentorship provided to Indigenous children and young people provided by local elders and community leaders. Faced with the lack of an evidence-base of culturally sensitive offender programs the Committee resorted to the "finding" that these two programs "have received positive feedback as effective and culturally appropriate programs for young Aboriginal people" (LA LSC, 2018: 169)

[23] In 2016-17 Indigenous children and young people comprised 62% of participants, even after 61.73% of Indigenous young people referred declined to participate in the program (NSW Government, 2018: 24). The Youth on Track program, which was given strong support by the Committee and many stakeholders submissions, including Indigenous stakeholders (LA LSC, 2018: 79-86), was questioned in terms of its cultural appropriateness when working with Indigenous young people (2018: 85-86; 162-163). NSW government assumed that, because most participants in YOT are from Indigenous backgrounds, that the

program has effective engagement (NSW Government, 2018: 24). This assumption is undermined by YOT's high level of attrition. Between January 2015 and June 2016, 367 clients were referred to YOT, 66% refused to participate, only 34% of referrals received an initial risk assessment, and 38% of these clients exited the scheme. The level of attrition was far greater for Indigenous young people. Only 38% of Indigenous young people completed the program compared to 62% of non-Indigenous young people (Cultural and Indigenous Research Centre Australia, 2016: 23-25).

[24] The other programs are an Aboriginal bail support program in Dubbo, a cognitive impairment diversion program that diverts offenders into the justice health system using sections 32 and 33 of the *Mental Health Forensic Provision Act, 1990,* and the Ngudjoong Billa Aboriginal Re-integration and Transition program that operates in Shoalhaven and the South Coast for young Indigenous offenders existing detention (Communities and Justice, 2018: 8).

[25] In response to the rapidly increasing prison population in NSW, the state has attempted to reduce the time spent there by reforming parole to transfer adult offenders to community-based intensive risk case management that targets offenders anticipated to be at moderate to high risk of re-offending (2018: 9-10). In addition, barriers for Indigenous offenders' access to Intensive Corrections Orders have been modified to channel more Indigenous Offenders into this "alternative" to prison. Indigenous peoples are not exiting the system but are increasingly being channelled into intensive community-based risk management programs and in prisons in a concerted effort to reduce recidivism.

[26] Berlant's analysis is founded on the slow-death crisis-scandal management of obesity in the US context. Obesity is considered as being an endemic situation, a chronic disease of time, and a profitable site of neo-liberal governmentality that justifies and employs medical-clinical, affect management and pedagogical mechanisms to "get the fat (the substance and the people) under control" (2007: 763). This and other biopolitical programs of self-improvement and the management of chronic health conditions feed antagonistic structural relations that retreat from the endemic itself. In the case of youth diversion and anxieties and projections about the risk of "long-term involvement in the criminal justice system", diversion with intensive actuarial risk interventions has become an almost pathological investment that mediates the collective imagination across the technological-governmental-cultural registers. This is projected into children's and young peoples' perpetually deferred futures, accrued in and on the promises and logics of anticipatory risk management and the collective mediated techno-normative championing of offender risk management programs, where structural obstacles are disavowed, and recalcitrant bodies relegated to a slow death.

[27] Berlant (2007) distinguishes this temporal relation from the politics of the event, of crisis or of catastrophe. While Indigenous deaths in custody or the over-representation of Indigenous peoples in custody inquiries are often framed as being a discrete event or a crisis, slow death foregrounds an account of the "ongoingness" of ordinary relations where living and dying are located within a reproductive zone of proximity and precarity.

[28] This can equally be applied to the recurrent raised visibility about child removals or Indigenous over-representation "emerges into public awareness and controversy and subsides back into forgetfulness and ignorance, leaving the unjust treatment of Indigenous (peoples) to continue, repeated and unresolves" (Haebich, 2015: 22). Haebich understands collective amnesia as an instrument of settler colonialism where facts that unsettle colonial narratives, such as the narrative of benign settlement, are ignored and forgotten.

[29] For a more comprehensive account of the adverse and disabling experiences of children and young people in the youth justice system (see DJJ, 2003b; Kenny et al., 2006; Indig et al., 2009; Justice Health and Forensic Mental Health Network, 2017; Goldson et al., 2021: 3-9, 100-128, 129- 150). The most recent Custody Health Survey described young people in the youth justice system as "the most vulnerable youth in our society. By the time they enter custody many have long and complex histories of trauma, neglect, poor psychical and mental health, behavioural problems, and substance abuse problems (JHFMHN, 2017: 1). The survey found that being male, living in areas of the lowest socioeconomic status, and being of Aboriginal origin were associated with greater levels of illness and disability (2017: 11). One in five had been placed in OOHC by 16 years of age where Indigenous children and adolescents were over-represented. Fifty-three per cent had completed Year nine or below, with significant histories of truancy, suspension, and expulsion. Eighty three percent met the criteria for a psychological disorder and sixty-three

met the criteria for dual or multiple diagnosis. Forty-eight had been exposed to a past traumatic event, 68% had experienced childhood abuse or neglect, 17% had an intellectual disability, 10% had self-harmed while in custody and 2% had attempted suicide, and 54% had a parent in prison. On all measures Indigenous young people's experiences were worse compared to non-Indigenous young people. A comparison of the findings from this survey and another conducted in 2009 demonstrated that many of the life conditions of young people in custody had deteriorated: a greater proportion had been in custody previously, had a parent who had been in prison, had unsettled or no accommodation, had been bullied, were drug and/or alcohol affected at the time of their offence, and fewer were attending school six months prior to custody.

[30] McAra and McVie's research (2005, 2007, 2012) demonstrates that selection effects that operate at different stages of the juvenile justice process result in certain categories of young people "being propelled into a repeat cycle of referral into the juvenile justice system" and that as this relation deepened it became increasingly difficult to break free from re-offending (2012: 353). See also Goldson et al., (2021: 5-13); Cuneen et al. (2015: 140-168); Hannah-Moffat (2015: 35); Goddard and Meyers (2017: 155-158).

[31] Tune (2018: 15) described the child protection apparatus in NSW as operating in a crisis mode that is not effectively targeting vulnerabilities in families using early intervention and effective child protection services. Despite investing approximately $1.86 billion in vulnerable families across the service continuum in 2015-16 family needs were not being met early enough. Moreover, the increasing over-representation of Indigenous children in child protection and OOHC was not being addressed to lower rates of child removal.

[32] This review was an outcome of extensive campaigning by Grandmothers Against Removals in NSW to raise awareness about "the ongoing forced removals of Indigenous children, the legacy of trauma, and the steps required to bring about change" (Gregoir (2019), cited in Family Is Culture, 2018: 2).

[33] At Risk of Significant Harm.

[34] The Culture is Family report provides extensive insights into the systemic failings of the child protection apparatus to adequately assess, support and utilise services for Indigenous families and kin at all stages of intervention: the poor usage of early intervention services (2019: 143-84), poor utilisation of alternatives to removal (2019: 204-211), poor practices in entry to care (2019: 212-220), poor removal practices (2019: 221-25), and poor recognition of the harms of removal (2009: 226-34). The data analysis revealed that approximately half of the Indigenous children entered care before they turned five, and almost a quarter were taken into a care at birth or from hospital (2019: 44). Most children (73.2%) were taken into care under the authority of a court order that placed parental responsibility with the state; only 53.1% of children still in care at the time of the review were placed with an Indigenous carer, contravening the Aboriginal Child Placement Principle (46). This data is derived from the inquiry's "review cohort" of 1,144 Indigenous children who entered OOHC in 2015-16 (2019: 44).

[35] These estimates included the costs of key governmental services across Family and Community Services, Justice, Legal Aid, health, Ambulance, Education, the Federal Department of Social Services, and the Federal Department of Health (SCIU/Taylor Fry, 2018: 14).

[36] This segment was estimated to incur 50% of the future state budget, these costs being concentrated in next generation OOHC (just under 100% of future OOHC costs), child protection services (45% of future costs for children aged 5 years and under), and justice (32% of future costs) (SCIU/Taylor Fry, 2018: 16).

[37] The two other risk groups who were vulnerable young people transitioning to adulthood (1.3% of the cohort and 3.4% of total costs) and young mothers and their children (0.7% of the costs and 3.4% of total costs) (SCIC, 2018: 19).

[38] The main risk factors for this group were having a parent with one or more risk factors, two or more perinatal risk factors, and being assessed as being at risk of significant harm in the child protection system.

[39] The modelling estimated that 21% of this risk group were projected involved in the justice system, while 6% would be expected to enter custody (SCIU/Taylor Fry, 2018: 67)

[40] The main risk factors for this group were (in the past five years) having justice system interactions, a confirmed assessment of being at risk of significant harm, parents interacting with the justice system, mental illness, alcohol and other drugs, or experiencing domestic violence (2018: 77).

[41] This was purportedly premised on the recognition of the rights of First nation peoples to exercise their practices, languages, and traditions, of the diversity of Indigenous peoples; a recognition of the impact of *past* colonial policies; and the recognition of culturally specific "needs" that need to be incorporated into the design, development and implementation of policies and programs (JJ, 2011: 2, my emphasis). In addition, it was strategized to consultation with Indigenous people and staff in the development and implementation of policies and programs, including all casework practices and policy procedures; and working with Indigenous communities to "deliver quality outcomes for Aboriginal and Torres Strait Islander young people.

[42] Since 2012 the AIHW began to routinely incorporate data about the relation between child protection and juvenile justice. The Institute reported data captured between 2013 and 2017 indicating that young people under youth justice supervision were 9 times more likely to be in the child protection system than the general population, while Indigenous young people were 17 times more likely than non-Indigenous young people to be in the child protection system (AIHW, 2018b). Most of these young people entered the child protection system initially (82%), with almost half (48%) of those under JJ supervision having previously been in the child protection system, and 8% currently in both systems. Most children and young people in OOHC are with relatives or kin (47%), 38% in foster care, seven per cent in third-party parental care, five per cent in specialised care facilities and one per cent in home-based care (AIHW, 2018b). At that time the largest number of children in OOHC was in NSW.

[43] This can occur in the family and living risk domain, education/employment, peer relations, substance abuse, and the personality/behaviour domains of the instrument as well as in many vulnerability issues that could be identified as needing to be included in case management (adverse living conditions, anxiety, depression, history of running away, low self-esteem, being shy/withdrawn and suicide ideation/attempts or self-injury.

[44] For an account of these "disabling" effects in relation to young people's mental health and/or cognitive/neuro-disabilities see Goldson et al. (2021: 129-150). Young people with disabilities are both under-protected and over-regulated by the police without adequate acknowledgement of the nature of their experiences and difficulties (137-140). When they are taken to the court, they are more likely to be refused bail and held on remand because of an inability to understand their bail conditions or due to a lack of support in the community to help them (140-145). Their disabilities are less likely to be diagnosed, and consequently they are less likely to be diverted and their complex needs remain neglected, untreated, and unsupported (145-149).

[45] In this pathway a resident leaves care without permission and the service provider calls the police as directed by agency protocol. The police then record the young person as a missing person (Colvin et al., 2018: 234-238). A young person may have a fight with another resident, or simply want to hang out at night outside of the facility and leave without staff permission. This raises the visibility of the young person with the police who may become a routine target of police encounters. In addition, the young person may "self-place" and stay with siblings or family and kin of their own choice. If the young person is already in the JJ system on bail or under supervision, this may result in breach action by the police.

[46] McGrath et al.'s (2020) data indicated that when magistrates were determining bail or sentencing, information about the young person's care status was rarely provided to the court (4.5%) even though 23.9% of their sample were in care. Unable to find suitable accommodation young people remained on remand. In cases where the young person had a mental health issue, the matter was sometimes dealt with by placing the young person on remand pursuant to s. 28 of the *Bail Act 2012,* which prevented obtaining a suitable medical assessment that would enable the legal representative to make a submission for sentencing under s. 32 of the *Mental Health (Forensic Provisions) Act 1990.* Their data is also suggestive that the lack of family support because of being in OOHC, is disadvantageous to sentencing where the court is likely to view family support as a mitigating factor in sentencing. McFarlane's research (2018: 421) indicated that children in OOHC were not adequately supported by FASCS' care workers at the police station or in court. Her data suggested that young people attended court with insufficient information about their circumstances, to better assist the court's decision-making.

[47] This necessitates that the OOHC provider establish a position statement that outlines "the values and culture" behind its Therapeutic Care program (NSW Government, 2017). Therapeutic care is defined as a holistic, individualised and team-based approach to addressing trauma, abuse, neglect, separation from

families and significant others, and other forms of adversity. The agency is responsibilised to train its staff, recruit staff with relevant experience and qualifications and liaise with "therapeutic specialists to support staff to provide a "safe and healing care environment" for people in OOHC. Children and young people are to be active participants "in the development of the care […] plans, including cultural plans". Given the over-representation of Indigenous children and young people in OOHC, this therapeutic regime is marketed as being "culturally sensitive" and that can help to preserve or restore Indigenous children to family, kin or community if possible.

[48] In response to the concerns raised in the Tune Report, FACS began implementing whole-of-government reforms ("Their Futures Matter") for vulnerable children identified in the SCIU modelling project described earlier. Priority groups were provided with targeted assistance and "wraparound" services. These included children under 12 in residential OOHC not co-located with a sibling, vulnerable young parents aged 25 and under, vulnerable children aged zero to 5, Indigenous vulnerable young parents aged 25 years and under and their children aged 0-5, Indigenous vulnerable young parents aged 25 years and younger and their children aged zero to five years, children aged 10 to 17 that are in contact with the juvenile justice system, with a focus on children in remand, children aged 5 to 12 in OOHC with behavioural or psychological needs and/or a disability and maybe in contact with the justice system, and children aged 14 to 16 in non-residential OOHC with non-custodial contact with the justice system (NSW Auditor-General, 2020: 48).

[49] See https://www.mackillop.org.au/programs/a-place-to-go (Accessed 30 March 2021). The control-care network that encircles the young person includes the programs case manager, a cross-agency co-ordinator, an education co-ordinator, a civil lawyer for legal support in the legal system, additional support at court using the Adolescent Court Community Team, a multidisciplinary health team, access to interagency panels for case oversight, and a specialist FACS caseworker.

[50] The Sanctuary Model links chronic stress and adversity (including poverty and racism) as maladaptive survival skills (see https://www.thesanctuaryinstitute.org/about-us/the-sanctuary-model/, accessed 30 March 2021). Triggers are conceptualised as being conditioned flight or fight responses that may result in aggressive behaviour.

[51] Warr (2016: 599) describes the challenges prisoners face on release as an aspect of the "pains of imprisonment" because "getting out" can be as painful as being in prison. Sykes (1958: 64) introduced the "pains of imprisonment" into criminological thought referring to the "deprivations or frustrations" of prison life for male offenders associated with the deprivation of liberty, goods and services, heterosexual relationships, autonomy, and security.

[52] The "pains of desistance" described by Nugent and Schinkel (2016) are more multifarious than I have conveyed here. They identify a constellation of interrelated pains including isolation, gaol failure and hopelessness.

[53] These disabling pains include pains associated with deprivation of liberty such as court-imposed conditions and behavioural controls dictated by the risk assessment (Hayes, 2015: 93), the pains of pressured supervision (Day et al., 2004; Hornquist, 2010), and the fears and anxiety of being threatened with a breach order that might send the offender back to detention (Durnescu, 2011).

[54] Hayes (2015) identifies five pains associated with community supervision for a small group of adult men and women: the pains of rehabilitation (wellbeing, pains of lifestyle change, shame), pains of liberty deprivation (loss of time, loss of money, loss of freedom), penal welfare issues (difficulties obtaining accommodation or employment, well-being, finances and family relationships), pains of external agency interventions (hostility of intervention, intensification of interventions, police oversight, perceived procedural unfairness, confrontation at trial, and stigma (family and friends, strangers, employment/job-seeking). There is a growing body of literature that concentrates on the pains of community penalty, the majority focused on adult offenders (see Payne and Gainey [1998] on the pains of electronic monitoring; Day et al. [2004] and Hornquist [2010] on pressured rehabilitation; Dornescu [2011] on the pains of probation; and McNeill [2019a] on the pains of persistent supervision).

[55] Crew's (2011) account is focused on adult males in prison. His analysis is framed within the context of incentives and earned privileges schemes in prison that have reshaped prison discipline and control that emphasises the loss of autonomy prisoners experience because of material constraints, staff regulation and the strictness of the regime towards the prisoner's own responsibility to stay out of trouble.

[56] Haley et al. (2017) characterises these as "fuck it" moments where the young person becomes overwhelmed by the adverse circumstances they find themselves, becoming decomposed along their individuating line of desistance and abruptly resuming an earlier pattern of behaviour. Cognitive behaviour programs take these "fuck up" moments as the material for intervention to coach individuals to identify the triggers leading up to these moments and begin reframing negative thoughts. In an account of observations of a group anger management session Miller (2104: 324-327) describes an intense banter between a group of adult male post-release offenders who attempt to get someone who is resentful about being constantly asked about his personal life just to admit that he is "fucked up" and needs the program. "I understand everything you saying, man. But the thing is, man, we're all fucked up" (2014: 326).

[57] Berlant (2011: 199) characterises an impasse as being like being in a *cul-de-sac* where one keeps moving but moves about in the same space. In Simondon's conceptualisation the subject experiences psychic tension that might lead to a phase-shift in individuation. Berlant describes an impasse as being decompositional where in attempting to resolve the situation, movement can "produce impacts and events, but one does not know where they are leading". These delays can be enabling as well as negative involving rejection, refusal, detachment, and psychosis. Self-management differs according to one's social location, the resources and supports available and the kinds of confidence or entitlement that the subject may feel they have.

[58] In this context Puar (2015: 6) refers to the biopolitical "right to maim" used in states of war: "maiming is an intentional practice that expands biopolitics beyond simply the question of 'the right of death and power over life'; maiming becomes a primary vector through which biopolitical control is deployed in colonised space".

[59] McNeill (2019: 225) accuses correctional authorities as failing to see the subject as an individual, as failing to adequately discern the person. By being constituted as a risk-bearing subject this is projected socially and temporally situating the risk subject in a network of supervision and control.

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