

**DESIGNING BODIES AND BORDERS:  
A REVIEW OF BIOLOGICAL SCREENING IN CANADA**

By:

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University of Victoria, BA (Hons), June 2006

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**Supervisory Page**

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## **Abstract**

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This thesis evaluates the art involved in the process of constructing borders. I review the governmental processes involved with Canadian border policies as they facilitate the welcomed and the rejected. I ask: how do citizenship and immigration policies operate to maintain and reproduce borders, separating Canadian citizens inside the state from ‘foreigners’ outside. This thesis considers borders not only as repressive instruments for exclusion but also in a productive sense as they create citizens, national identities and populations. The thesis focuses on one central assemblage of border technologies: immigrant medical examinations. By reviewing citizenship and immigration policies, laws and practices since confederation, as well as contemporary legislation, policies and interview data, this thesis argues that these examinations are founded on principles of exclusion. While current policy directions suggest using these medical examinations for inclusive practices, I argue that such inclusive practices still reify the exclusive expectations of the state for citizens to be healthy and productive in the present and in the future.

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I want to say thank-you to my friends and family for understanding when my asocial nature took the best of me and I was not visible for days at a time, thank-you for being there when I resurfaced. I must also acknowledge the friends who inspired me creatively throughout this process, specifically my friend Tiina for being there even when I could not be; thank-you for inspiring art in me. And final thanks goes to one friend, Michael; thank-you for walking with me even though I did not want you to; for listening to me when I could barely speak; and, for being close to me from far away.

## **Dedication**

This thesis is dedicated to my nephew, James. Not because he can yet understand or read parts of this thesis, but because he is a new part of my life who provided much joy and entertainment over the last year as I wrote this thesis.

## Introduction: Designing Canadian Citizens

*Foreigners are coming, how do we make them into good Canadian citizens?*<sup>1</sup>

*Only those who in time can take their place as worthy fellow citizens should be admitted to our Canadian heritage.*<sup>2</sup>

These quotes by J.S. Woodsworth, founder of the Cooperative Commonwealth Federation (CCF) and later the New Democratic Party of Canada (NDP) depict the importance of dissimulative design in Canadian politics. Writing in the early 1900s, Woodsworth demonstrated a concern with how to artistically craft the Canadian population. As one of the founders of Canada's most left-leaning socially conscious party, we might find these quotes surprising for their assimilationist rhetoric. However, as this thesis argues, those committed to social justice policies and explicit exclusions are aligned in common pursuit of cultivating citizens of a certain kind within the Canadian design.

Art, as an underlying theme in this thesis, implies a transformative capacity, which confers particularly appealing or aesthetically satisfying structures to produce or create the subjectivity of the receiving constituent. This thesis is concerned with the art, or citizen design, predicated on the real subject of art: the artist, which in this thesis, refers to those responsible for governance and border regulation in Canada. Art in this thesis ties to what Plato referred to as *technê* in the *Republic*. Plato claimed that the production of art requires careful education, discipline and the cultivation of souls destined for particular crafts. Art is also necessary for beautiful, good and aesthetically pleasing purposes:

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<sup>1</sup>J.S. Woodsworth. Strangers Within Our Gates. Toronto: University of Toronto Press, 1972. p. 234

<sup>2</sup>Woodsworth, 1972, p. 241.

Mustn't we, rather, look for those craftsmen whose good natural endowments make them able to track down the nature of what is fine and graceful, so that the young, dwelling as it were in a healthy place, will be benefited by everything; and from that place something of the fine works will strike their vision or their hearing, like a breeze brings health from good places[...][401c-d]<sup>3</sup>

Now isn't it also true that if images of writings should appear somewhere, in water or in mirrors, we wouldn't recognize them before we knew the things themselves, but both belong to the same art and discipline? [402b]<sup>4</sup>

According to Plato, art is much like skill or craft, aligned with the pursuit of science. This differs from Kant's understanding of art, which, according to him, is separate from science.<sup>5</sup> Despite this distinction, each thinker argues that art is purposeful and useful for mechanical and aesthetic purposes. Plato suggests that there are three arts: one that will use, one that will make and one that will imitate [601b].<sup>6</sup> In contrast, Kant distinguishes between the genius and the imitator.<sup>7</sup> We can think of the genius as creating something new and the imitator as someone who (re)creates something preexisting.

For the purpose of this thesis, art here is conceptualized as both something made and imitated and not particularly 'genius' in the Kantian sense. In short, this thesis refers to art as something socially produced, a productive design that reflects the image and desire of the artist. While Canadian political figures – conservative and socially progressive alike – pledge commitment to the aesthetically-pleasing image of an open, multicultural and diverse society, this thesis argues that in reality, this pleasant construction reflects exclusive interests and dissimulative artistic relevance. While this is not *my* interpretation of art broadly-speaking, this is the understanding of art that I see employed by our political figures today as they cultivate the requirements for citizens of a

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<sup>3</sup>Plato. The Republic of Plato. Trans. by Allan Bloom. Basic Books, 1968. p. 80.

<sup>4</sup> Plato, 1968, p. 81.

<sup>5</sup> Immanuel Kant. Critique of the Power of Judgment. Trans. By Paul Guyer. Cambridge: Cambridge University Press, 2000. p. 182.

<sup>6</sup> Plato, 1968, p. 284.

<sup>7</sup> Kant, 2000, p. 187.

certain kind in the past and in the present.

Specifically, this thesis is about the art involved in the process of constructing borders and the governmental processes involved with Canadian border policies as they facilitate the welcomed and the rejected. I ask: how do immigration policies operate to maintain and reproduce borders, separating Canadian citizens inside the state from ‘foreigners’ outside. It is important to consider borders not only as repressive instruments for exclusion; we must also think about borders for their contribution to creating citizens, national identities and populations in a *productive* sense. Canadian citizenship and immigration policies, as precise border technologies, continuously reproduce distinctions between valid and invalid citizens. While this thesis focuses on the independent category of immigrants, we can also learn something about processes of inclusion and exclusion, which appear in refugee policies. Further, this thesis responds to the question: how do immigration technologies define life as worthy and necessary for the productive goals of our state? Nikolas Rose explains that technologies of government can be understood as assemblages of forms of practical knowledge with modes of perception, practices of calculation, vocabularies, types of authority, forms of judgment, architectural forms, human capacities, non-human objects and devices, inscription techniques and so forth, traversed and transected by aspirations to achieve certain outcomes in terms of the conduct of the governed.<sup>8</sup> This thesis employs Rose’s definition of technology to describe governmental actions regarding border and immigration practices in Canada.

Anxiety about our borders is not a new phenomenon. Distrust of immigrants, external threats, fraud and efforts to secure borders to deflect risky outsiders features

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<sup>8</sup> Nikolas Rose. Powers of Freedom. Cambridge: Cambridge University Press, 2002.

prominently in political paranoia today and has so since the fortification of state boundaries. This Master's thesis is concerned with such anxiety and paranoia as it shapes Canadian political discourse, policy and practice, in efforts to secure our borders and keep out potential risks. These risks – the poor, the unhealthy, the fraudulent – operate as real concerns for our political elite. In this thesis, I demonstrate how this fear enabled racist border policies in the past. Despite changes to border technologies, specifically citizenship and immigration legislation and practice, I argue that the assumptions about these “risks” remain prescient. This thesis offers a close investigation of historical shifts and trends of border technologies with respect to immigration policy and legislation and biological screening through the use of medical examinations in Canada.

This investigation does not claim to prescribe solutions to such complexities; however, the goal of this project is more than to describe a troublesome picture of Canadian citizenship and immigration. By unraveling some of the (dis)continuities throughout Canada's immigration policies and practices, I offer a critical review of technologies past and present in pursuit of making some of the less visible exclusions and practices more visible. I believe this type of research is crucial to unsettle assumptions and help us less readily accept myths and what our leaders would have us believe as truths, which shape policy in this field. In doing so, I aim to problematize the notion of the humanitarian, welcoming Canadian, which our leaders so often praise and further examine how the myth of humanitarianism only serves to propagate the very (in)visible exclusions embedded within our immigration technologies.

Despite changes made in order to liberalize and in essence, I argue, “humanitarianize” citizenship and immigration practices over the last century, this thesis

argues that fundamental historical assumptions about foreigners and “strangers” remain embedded within contemporary policy and practice. While explicit exclusions have been removed from the legislative discourse, further analysis of the existing immigration technologies depict remaining assumptions about non-citizens as threats to the Canadian population. By evaluating legislation, policy, operational manuals and political discourse, I will decipher some assumptions about non-citizens as potential threats and how these threats are artistically crafted vis-à-vis hospitable and humanitarian Canadians.

### **Introducing the Theoretical Frame**

Although this thesis is not a study of theories of biopolitics or governmentality, I believe that these conceptual frameworks provide much insight to how we think about our borders in Canada, especially with respect to historical and contemporary use of immigrant medical examinations. Immigration technologies and border policies, with a specific emphasis on immigrant medical examinations, can be understood as assemblages. In this thesis, an assemblage refers to historically constituted regimes or practice of elements deriving from historical trajectories. These polymorphous regimes, in their internal and external relations, bear upon a multiple and wide range of problems and issues. From the perspective of governmentality, formal institutions of government and the law play a part in the operation of these assemblages; however, neither immigration policies nor the border can be reducible solely to the state or to law. The state, from this approach, is a decentred locus of power, which executes law as an instrument.<sup>9</sup> The focus of analysis in this thesis does not rely on conceptions of formal

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<sup>9</sup> Michel Foucault in The Essential Foucault edited by Paul Rabinow and Nikolas Rose. New York: The New Press, 1994. p. 244.

government institutions, but evaluates various processes and technologies governments use to shape, guide and direct the conduct of its (non)citizens. A conception of government in this way includes how individuals are urged to govern themselves. The operation of power, in this context, is not precisely a centralized exercise from a sovereign authority, but a compilation of ubiquitous and dispersed technologies.

This theory of governance requires that we not only pay attention to the source of power, but also its techniques, strategies and effects. In this regard, power is not exclusively negative or repressive. Power must also be considered as productive, insofar as it produces reality and domains of objects, rituals and truths. Following this conception of power and governance, this thesis will analyze immigration technologies which focus not solely on negative or coercive border practice, but also how these technologies produce historically specific designs of “the border”, “Canadian identity”, “citizenship” and “(un)worthy citizens”. The border in this thesis refers to what Anna Pratt calls a “contingent and artful accomplishment”, meaning it is continuously constituted and reconstituted at a variety of delocalized sites through assemblages of intersecting authorities, technologies and forms of knowledge.<sup>10</sup> It is a flexible sociological construct that plays a crucial role in the continuous regulation of the identities of citizens, immigrants, refugees, criminals and the list goes on.

The governmental understanding of borders, technologies and immigration practices differs from premodern conceptions of authority. In order to unravel some differences between liberal governmental technologies today and ruling technologies of the past, this thesis is motivated by tensions between competing theories of realism and

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<sup>10</sup> Anna Pratt. Detention and Deportation in Canada. UBC Press: Vancouver, 2005. p.11.

liberalism. While these theories will be explored in detail in the final section of this thesis drawing on Carl Schmitt and Immanuel Kant, I will briefly introduce these approaches here. Theories of realism, on a general level, claim that states are motivated by economic and military power or security, which contrasts to motivations based on the realm of common, rational ideals. From this perspective, states contain supreme authority, are minimally influenced by non-governmental actors and pursue national interest through rational means. State authority in this regard is built upon the assumption that human nature is egocentric and competitive. This understanding of realism is depicted in Thomas Hobbes' *Leviathan*.

In premodern times, sovereign punishments were bodily, bloody and spectacular. This spectacularity reestablished the authority of the sovereign over his territory and subjects, as a vengeful display of dissymmetry between subjects daring to violate law and all-powerful sovereign rulers who display ultimate strength. At the same time, sovereign rulers could withhold punishment and suspend "laws of vengeance" by deciding on the exception.<sup>11</sup> This thesis links realist thought to the concept and protection of sovereignty by drawing on Carl Schmitt, which appears to contrast with liberal thought, as derived from Immanuel Kant. Sovereign power of the past differs with the operation of power today. Specifically, in Western countries, power operates through liberal modes of governance. By focusing on the Canadian case, a modern (neo)liberal country, this thesis will demonstrate how shifts to "liberalize" our policies and practices appear vis-à-vis realist, sovereign conceptions about the state.

While realist thought emphasizes states' political and military power, liberalism

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<sup>11</sup> Pratt, 2005, p. 12. Anna Pratt draws on Giorgio Agamben's notion of the sovereign exception here.

as a theory is concerned about how states are guided by universal principles, such as Kant's ideas for perpetual peace. According to a general theory of liberalism, international cooperation is possible between states aligned with common ideals. There is room for non-state or non-governmental actors to influence governments and make differences to policy objectives. Liberal thought also finds cultural and economic clout to be significant for state authority. I believe that discussing realist and liberal theories of state power are crucial for this thesis in order to examine the Canadian case and evaluate changes to immigration policies and medical technologies in our modern liberal era.

While sovereign rule appears in contrast to liberal rule, Michel Foucault argues that premodern sovereign power is now replaced by governmentality regimes. Whereas sovereignty is characterized by the discontinuous exercise of power through spectacle, by law as command and by sanctions as negative, bodily and deductive, disciplinary regimes feature the continuous exercise of power through surveillance, individualization and normalization.<sup>12</sup> Disciplinary regimes in prisons, factories, schools and asylums worked to instill obedience and social utility by encouraging individuals to internalize methods of self-scrutiny and control. Foucault suggests that a new form of governance, internal to subjects themselves as opposed to imposed externally, has come to replace sovereign power. Contrary to the negative and deductive sovereign power over territory and subjects with the law as its singular instrument, the art of government, also referred to as governmentality, follows a productive logic. This art of government seeks to rule, shape and guide the conduct of citizens in the name of health, wealth and the welfare of the population.

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<sup>12</sup> Michel Foucault. Discipline and Punish. Trans. By Alan Sheridan. New York: Vintage Books, 1995.

Within governmental modes of rule, economics are essential features of state management. This rule also includes the emergence of apparatuses of security, which include the use of standing armies, police forces, diplomatic corps, intelligence services and spies, but also health, education and social welfare systems and the mechanisms of the management of the national economy. Further, governmental rule is linked to the development of statistics as a science of government and to the new science of political economy. It entails the development of complex and vast administrative state apparatuses to achieve these diverse aims. Instead of conceptualizing the growth of the administrative state in terms of ever-expanding state domination of society, we can think about a process through which the discursive, legislative, fiscal, organizational and other resources of the public powers have come to be linked in varying ways into networks of rule. While sovereign rule has transformed into governmental modes of governance, this governmentality does not entirely replace sovereignty or discipline. Rather, it rearticulates them within a concern for the population and its optimization as a whole. This optimization of the population, in terms of a productive logic of regulation for the population at large, can be understood through a biopolitical lens.

The state expresses its goals through the qualified life of its citizenry. As Michel Foucault articulates, biopolitics in our modern era refers to the governance of *life itself*. The governance over life centres on several elements. One element is the conception of the body as a machine:

its disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls, all this was ensured by the procedures of power that characterized the disciplines: an anatomo-politics of the human body.<sup>13</sup>

Another element of this control, as Foucault argues, is the supervision of the body

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<sup>13</sup> Michel Foucault. History of Sexuality Trans. by Robert Hurley. New York: Vintage Books, 1978.

operating as a series of regulatory controls. In the later sense, political power operates through a series of technologies where administrative bodies carefully calculate and manage *life itself*. This appears in governmental population management strategies as officials examine a species body more broadly. In this respect, I understand the regulatory controls of screening the health of potential citizen bodies as a biopolitics of the population. Life itself is carefully calculated and managed in order to achieve the material, productive, economic goals of the state.

Foucault demonstrates in *The History of Sexuality* how biopower is indispensable to the development of capitalism. He argues that capitalism would not have been possible without the controlled insertion of bodies into the machinery of production and adjustment of population into economic processes.<sup>14</sup> Biopolitics refers to the political operation of controlling beings and managing health for maximum profit. Empirically, the state manages its populations through the use of medical examinations as a requirement for citizenship. In light of this governance over bodies, a non-citizen, unhealthy, foreign space is rendered unsuitable for the productive goals of the state. A close examination of citizenship and immigration technologies in Canada reveals the operation of biopolitics.

### **Introducing the Case**

The creation of immigration policies and laws operates today, as it has historically, to play a significant role in states' control over its population. By regulating the movement of who is (not) eligible for entry, residence and citizenship in Canada, the government and bureaucracy have the political power and authority to define its

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<sup>14</sup> Foucault, 1978, p .141.

population. This ability to define and set out the criteria for potential citizens, I argue, can be understood as a political operation of social control. Furthermore, not only is this ability an execution of social control, it also functions to define the ideal form of a citizen, which in effect comprises the space available for discrimination and rejection of the failed applicant: a life rejected as unworthy for the regulatory goals of the state. This thesis addresses how citizenship and immigration policy and discourse in Canada continues to operate as a strategy that constructs a politics of inclusion (through productive discourses) and exclusion (through repressive discourses). By evaluating new technologies and attempts to liberalize and humanitarianize immigration and border technologies, this thesis presents the case of Canadian medical diagnostics, which uncover both novel and old-fashioned mechanisms for state control over a population. Rather than being a case *of* either Canadian humanitarianism or ruptures *to* supposed humanitarianism, the case will juxtapose both the nice and nasty elements of modern immigration and border technologies.

Canadian citizenship and immigration policy and discourse appears in Acts, Regulations, policies and practices that affect which potential citizens are allowed entry to Canada and ultimately have the rights necessary to participate as a political being. Discourse, in this thesis, refers to institutionalized thinking and speech, which depict social boundaries defining what is acceptable about a particular subject. As Judith Butler explains, discourse can be understood as the state's power to establish and maintain the domain of what will be publicly speakable. In addition to playing a limiting function to what is speakable, the state actively produces the domain of publicly speakable speech, demarcating the line between the domains of the speakable and the unspeakable and

retaining the power “to make and sustain that consequential line of demarcation”.<sup>15</sup>

Discourse, as both a limit and productive structure, delivers vocabulary, expressions and style necessary to communicate. Through historically constructed discourses, we can understand the plurality of truth and knowledge. These systems of thought construct subjects and produce meanings for identity and subjectivity.

### **Introducing the Skeptic**

At a pragmatic glance, one might praise the necessity of bringing in the most desirable citizens to reside within Canadian borders, those who will contribute to the market economy and enhance a diverse polis. A skeptic might fear that unhealthy immigrants are in fact, unworthy beings; why would we let in people who would waste our resources? We often hear the claim that poor and unhealthy persons would put a drain on our system and consequently should not be able to immigrate to Canada. To put this problem into perspective, consider this dialogue from Charles Dickens’ *A Christmas*

*Carrol*:

“At this festive season of the year, Mr. Scrooge,” said the gentleman, taking up a pen, “it is more than usually desirable that we should make some slight provision for the Poor and destitute, who suffer greatly at the present time. Many thousands are in want of common necessities; hundreds of thousands are in want of common comforts, sir.”

“Are there no prisons?” asked Scrooge.

“Plenty of prisons,” said the gentleman, laying down the pen again.

“And the Union workhouses?” demanded Scrooge. “Are they still in operation?”

“They are. Still,” returned the gentleman, “I wish I could say they were not.”

“The Treadmill and the Poor Law are in full vigour, then?” said Scrooge.

“Both very busy, sir.”

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<sup>15</sup> Judith Butler, “Sovereign Performatives in the Contemporary Scene of Utterance”. *Critical Inquiry*. Vol. 23(2) Winter 1997. p. 356.

“Oh! I was afraid, from what you said at first, that something had occurred to stop them in their useful course,” said Scrooge. “I’m very glad to hear it.”

“Under the impression that they scarcely furnish Christian cheer of mind or body to the multitude,” returned the gentleman, “a few of us are endeavouring to raise a fund to buy the Poor some meat and drink, and means of warmth. We choose this time, because it is a time, of all others, when Want is keenly felt, and Abundance rejoices. What shall I put you down for?”

“Nothing!” Scrooge replied.

“You wish to be anonymous?”

“I wish to be left alone,” said Scrooge. “Since you ask me what I wish, gentlemen, that is my answer. I don’t make merry myself at Christmas and I can’t afford to make idle people merry. I help to support the establishments I have mentioned: they cost enough: and those who are badly off must go there.”

“Many can’t go there; and many would rather die.”

“If they would rather die,” said Scrooge, “they had better do it, and decrease the surplus population. Besides — excuse me — I don’t know that.”

“But you might know it,” observed the gentleman.

“It’s not my business,” Scrooge returned. “It’s enough for a man to understand his own business, and not to interfere with other people’s. Mine occupies me constantly. Good afternoon, gentlemen!”<sup>16</sup>

We can take this dialogue as metaphor for the border in Canada, which must screen those wishing to come to Canada based on their independent, self-sufficient productive capacity and reject those who might be left alone so as to not hinder the population. The healthy and productive are worth something *to* the population as a whole; however, the unhealthy and unproductive remain outside the hospitable space of the Canadian state.

One might be wary of such skepticism and ask the question: if some citizens are desired, what of the non-desirable? Who defines the desired citizen and how must one become a desired subject of the Canadian state? I take up these questions to look at the (im)mobility of the Canadian border as it seeks to separate lives into categories of social worth and those lacking in worth. This thesis evaluates this dichotomization of life using

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<sup>16</sup>Charles Dickens. A Christmas Carol. 1843. The Vancouver Sun, Children’s Book Series. Reprinted in 2004. p. 14-16.

Foucauldian themes of ‘biopolitics’ and ‘governmentality’ to evaluate the interplay of immigrant medical examinations and a discourse of Canadian humanitarianism. The skeptic that this thesis responds to is not only the skeptic concerned with migration as a matter of public safety, security and economic responsibility, but the ‘welcoming’ and ‘hospitable’ as a skeptic as well. This thesis, by employing theories of biopolitics and governmentality, writes against the production of state power and control from *both* the position of the hostile and humanitarian skeptic.

### **Thesis Overview**

Chapter one in this thesis presents discursive structures in place in Canadian politics, which construct the identity of a population of good-natured, welcoming and hospitable humanitarians. This thesis employs ‘humanitarianism’ to mean Canadians working together where people from all over the world live in harmony, where differences are respected and people live as an inclusive population. Humanitarianism in this thesis is linked to the political requirement for common liberal values of progress, productivity, good health and pursuit of morals. This discourse of humanitarianism will be traced back to our ‘social conscience’, which derives from the origins of the New Democratic Party. In the mid-1950s and through the 1960s, human rights discourses became more prevalent in Canada, which attempted to delegitimize explicitly racist and moralistic immigration categories that were promoted and rationalized by national purity discourses.<sup>17</sup> Shifts to a more inclusive, standardized immigration program has been heralded as a true success for liberalism. The 1976 Immigration Act is often portrayed as

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<sup>17</sup> Pratt, 2005, p. 73.

the substantive historical shift in the nature and orientation of Canadian immigration law and policy. As political scientist Gerald Dirks praises:

The Immigration Act, 1976, as it is known, constituted the most liberal piece of immigration legislation ever to become law in Canada. The Act showed a positive emphasis and set as immigration priorities, the reunification of families, humanitarian and compassionate treatment of refugees and the promotion of programs satisfying Canada's economic, social, demographic and cultural goals.<sup>18</sup>

Despite liberalized or humanitarianized changes to immigration legislation, this thesis argues that even the most 'welcoming' and 'hospitable' humanitarians in Canada presume a kind of othering subjectivity on those in need of welcome and hospitality. In effect, (re)producing exclusionary structures of the past.

Chapter two of this thesis will conduct a further historical analysis of immigration policies and practices as they have evolved since Confederation. This chapter evaluates discursive and technological shifts and trends regarding immigration technologies and foreigners. This chapter examines the relationship between Canada's citizenship and immigration program and the market by building upon the analysis by Christina Gabriel and Yasmeen Abu-Laban in *Selling Diversity*. While these authors question whether Canada falls short on its alleged commitment to social justice in a multicultural and diverse society, I question the make-up of the commitment to social justice and diversity itself.

The second section of this chapter focuses on a particular assemblage, historical and present use of medical screening technologies and immigrant medical examinations. According to section 38 of the current Immigration and Refugee Protection Act, Immigrants undertaking immigrant medical exams are evaluated according to three

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<sup>18</sup> Gerald Dirks. *Controversy and Complexity: Canadian Immigration Policies During the 1980s*. Montreal: McGill-Queens University Press, 1993. p. 14.

criteria: whether their health condition would endanger public health, public safety, and whether their condition would place excessive demand on health or social services. In addition, the regulations state that these newcomers are also evaluated for potential risk in the future. These legal and discursive policies stigmatize foreigners as prone to illness and plays on a fear that foreigners bring diseases to our country. In doing a rigorous analysis of past and present Canadian citizenship and immigration policies and laws, it becomes evident that the program is embedded within neoliberal economic principles and framed against fear of a foreign outsider.

Chapter three of this thesis examines changes to immigration and border technologies within our contemporary neoliberal security climate and an era of “securitization”.<sup>19</sup> These changes demonstrate a preoccupation with the politics of managing risks and preventing threats from entering Canada. Specifically, this chapter looks at the state’s attempts to know the unknowable and manage identities in Canada through the use of technologies such as biometrics, passports and permanent resident cards. These technologies operate in a similar fashion to that of immigrant medical examinations. The main question being responded to in this chapter is how the securitization of migration operates discursively and technologically vis-à-vis the discourse of humanitarianism.

Chapter four, the final chapter of this thesis, evaluates the fundamental assumptions of humanitarian and liberal conceptions of state power in contrast to sovereign and realist theories of the state. This chapter questions the discourse of

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<sup>19</sup>The concept of “securitization” is associated with the Copenhagen school, namely with constructivist theorist Ole Waever. Ole Waever, Barry Buzan and Jaap de Wilde discuss securitization in the military, politics, economics, society and environment in their book *Security: A New Framework for Analysis*. Chapter 3 of the thesis looks at the securitization of migration from this lens.

humanitarianism and liberalism for their discriminatory assumptions and the implications for the subjectivity of Canadian citizens and those excluded from Canada. By evaluating similarities and differences of these theories using Carl Schmitt and Immanuel Kant, this concluding chapter will discuss the vestiges of sovereign power couched within a discourse of liberalism. Further, this chapter re-visits the liberal technologies that control borders and processes of inclusion and exclusion through the lens of governmentality and biopolitics. Finally, this chapter concludes by responding to whether processes of securitization are in fact, a rupture to the seemingly gentle technologies of humanitarianism, or, rather operate as an attachment to facilitate the continued (re)production of these processes for controlling the Canadian population.

## Chapter 1 – Canadian Immigration and the Humanitarian Guise

Our political leaders delight in the opportunity to imagine Canada as a multicultural, diverse and hospitable nation. In contemporary Canadian political discourse, the narrative of the altruistic, accepting, inclusive Canadian citizen appears as politicians attempt to persuade us of our harmonious nature. Our current government under the leadership of Prime Minister Stephen Harper welcomes us into his imagination:

Canadians can be proud of their country and its achievements. Working together, we have built a nation that is prosperous and safe; a country where what matters is who you are and what you do, not who you know or where you're from; a place where people from around the world can live in harmony; a federation that is more united at home and respected abroad than it has been for decades.<sup>20</sup>

The language of freedom, tolerance and respect for diversity transpires pervasively in the image of a coherent Canadian aesthetic. For example, Stephen Harper reminds us of our collective responsibility “to build a country based firmly on the notion of equality of opportunity, regardless of one’s race or ethnic origin”.<sup>21</sup> Our Prime Minister wants Canadians to be proud of their identity. He envisions a prosperous and safe nation where “people from around the world can live in harmony”. As an attempt to emphasize the importance of Canadian identity and respect for values such as diversity and multiculturalism, Prime Minister Harper appointed a Secretary of State for Canadian Identity and Multiculturalism. During a 2008 New Year’s address, the Secretary of State for Canadian Identity and Multiculturalism, Jason Kenny, outlined his role and beliefs about what it means to be Canadian by stating that: “Our Government considers Canada’s diversity to be one of our greatest assets and we are committed to strengthening our

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<sup>20</sup> Stephen Harper’s Mission for Canada. <http://pm.gc.ca/eng/feature.asp?featureId=4> Accessed January 30, 2008.

<sup>21</sup> “Prime Minister Harper Offers Full Apology for the Chinese Head Tax”. June 22, 2006. <http://pm.gc.ca/eng/media.asp?category=1&id=1219> Accessed January 30, 2008.

pluralism and our national cohesion”.<sup>22</sup> This chapter evaluates the rhetorical clout of such a pledge to welcome diversity in Canada.

This discourse of self-righteous Canadianism appears especially in political statements and foreign policy reports. Consider a recent government response to the Eighth Report of the Standing Committee on Foreign Affairs and International Development: “Advancing Canada’s Role in International Support for Democratic Development”:

Canada’s international reputation as a country that supports democratic values, processes, and institutions around the world is informed by Canada’s experiences with federalism, pluralistic legal traditions, the Charter of Rights and Freedoms and our approach to bilingualism, inclusion, and multiculturalism. It is also informed by the principles of freedom, human rights and the rule of law. Unlike other countries, Canada is neither perceived as advancing a particular agenda nor to be pushing one version of democracy over another. To the contrary, Canada is seen as a facilitator and supporter of local efforts. This reputation makes Canada a valued partner in international efforts to support democratic development.<sup>23</sup>

The concept of the self-righteous humanitarian Canadian, reputable around the world according to our political elite, consists of a character of open-mindedness, respect for diversity and inclusiveness. Our leaders would like us to believe that we are not an aggressive nation in the international sphere but loyal and steadfast, a nation that holds true to democracy, human rights and the rule of law thus making Canada an ideal partner for global affairs. In his remarks to a crowd at the opening of the Canadian Museum of Human Rights in Winnipeg, Stephen Harper articulated the importance of human rights to Canadian values: “Rights only flourish in free, democratic societies like Canada, where the principles of fairness, pluralism and justice are embedded in the history of the country

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<sup>22</sup>Jason Kenney, Secretary of State for Canadian Identity and Multiculturalism. “On the celebration of 2008 New Year and 15th Anniversary of Taiwan Entrepreneurs Society Taipei/Toronto”. January 12, 2008. [http://www.pch.gc.ca/pc-ch/discours-speeches/2008/kenney/2007-01-12\\_e.cfm](http://www.pch.gc.ca/pc-ch/discours-speeches/2008/kenney/2007-01-12_e.cfm) Accessed January 30, 2008.

<sup>23</sup>Government Response to the Eighth Report of the Standing Committee on Foreign Affairs and International Development: “Advancing Canada’s Role in International Support for Democratic Development” November 2, 2007. [http://www.international.gc.ca/democracy\\_Support.aspx](http://www.international.gc.ca/democracy_Support.aspx) Accessed January 30, 2008.

and the values of its people, as well as the laws of their governments”.<sup>24</sup> Evidently, our political leaders embrace the opportunity to indulge in crafting the myth of a fair and just Canadian society. As this myth is “embedded” within our historical narrative as Canadians, it presumes a kind of exclusion to those who are not part of such a history.

Despite this rhetoric, one area where we can examine the complex interplay of good-natured humanitarianism and processes of exclusion appears in immigration technologies, policies and practices of the past and into the present. While the second chapter of this thesis will look at these technologies through a historical discursive lens, this first chapter will present a critique of the “gentle” hospitable Canadian citizen by highlighting the dissimulation of contemporary humanitarian discourse and its origins. This chapter begins by unpacking the myth of the “humanitarian Canadian” and addresses the following questions: where does the idea of the humanitarian Canadian originate and how is it used by our political elite to achieve state goals? What are the implications for the Canadian border, specifically for immigration technologies? How is the language of humanitarian self-righteousness presented by our political elite vis-à-vis a seemingly paradoxical discourse of security? The third chapter of this thesis will evaluate how our contemporary political environment is complicated by questions of security, which appear as rupture, yet attach to, the pleasant notion of humanitarianism in Canada.

Praise for a self-righteous Canada appears within discourse emanating from across political party lines. Consider the philosophy of the Liberal government, the Official Opposition at the time of writing this thesis:

Canadians can be proud of our nation’s history of service to the world. Whether it is through

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<sup>24</sup> “Prime Minister Harper Announces Agreement to create the Canadian Museum for Human Rights in Winnipeg”. April 20, 2007. <http://pm.gc.ca/eng/media.asp?category=1&id=1633> Accessed January 30, 2008.

international aid, peacekeeping, trade or security, the Liberal team is committed to ensuring Canada's continued international role of pride and influence. As Liberals we believe Canada needs to approach foreign policy issues in a way that is mature, balanced, and above all, reflective of the core values we hold so proudly here at home: a belief in fairness, equality, respect for fundamental human rights, and the rule of law.<sup>25</sup>

The Liberal party in Canada has in the past and present, enjoyed the opportunity to perpetuate a myth of the righteous Canadian polis. By claiming to be proud of “our nation’s history of service to the world”, political elites re-create this symbol based on a crafted historical memory. In efforts to ensure Canada’s “continued international role of pride and influence”, the Liberal party assumes that there existed an original identity to propagate. In this thesis, I question this use of historical myth and memory.

An inherent tension between welcoming people *to* Canada and supporting those who already live here arises in modern, elite Canadian political discourse. The use of historical memory appears in the 2007 Speech from the Throne:

Canada is built on a common heritage of values, which Canadians have fought and died to defend. It is a country that continues to attract newcomers seeking refuge and opportunity, who see Canada as a place where they can work hard, raise families and live in freedom. Our Government is resolved to uphold this heritage by protecting our sovereignty at home and living by our values abroad.<sup>26</sup>

History in this respect, or a “common heritage of values”, provides impetus for claims to sovereignty by the Canadian state. In order to protect this history and heritage, according to our government, we must protect *our* state and keep *our* state safe, which consequently implies a need to keep out undesirable citizens and to populate the nation with qualified citizens. While pledging a commitment to and offering praise for, an open and welcome society, political discourse reveals that a *certain kind* of citizen is preferred in our country. This has several implications for newcomers trying to make a home in Canada.

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<sup>25</sup>Liberal Party of Canada: “Canada Will Not Fail the World”. [http://www.liberal.ca/world\\_e.aspx](http://www.liberal.ca/world_e.aspx) Accessed January 30, 2008.

<sup>26</sup>Speech from the Throne, October 16, 2007. <http://www.sft-ddt.gc.ca/eng/media.asp?id=1368> Accessed January 30, 2008.

On the subject of bringing newcomers to Canada, Stephen Harper claims that “everybody wins when newcomers bring their skills and values to this country” whether they bring *skills* – such as technology, trades, medicine, engineering or the humanities – or *values* of hard work – such as respect for law and order and commitment to family and to children.<sup>27</sup> Citizens are valued in Canada for their productive merit and their ability to contribute something of value to our country. On one hand, the government’s claim to a collective humanitarian past promotes Canadian identity within the nation. However, on the other hand, this pledge surfaces at the expense of outsiders trying to immigrate and participate in this collective identity while making Canada their home.

While the 2007 Speech from the Throne commits to welcoming newcomers, it also lays out concerns about securing our borders and protecting sovereignty. Canadian hospitality appears framed by statements about security and the need to protect our borders in order to preserve Canadian values. As Harper reminds us, there is “nothing more fundamental than the protection of our nation’s sovereignty and security”.<sup>28</sup> The October 2007 Speech from the Throne depicts the political vision for Canada:

Rebuilding our capabilities and standing up for our sovereignty have sent a clear message to the world: Canada is back as a credible player on the international stage. Our Government believes that focus and action, rather than rhetoric and posturing, are restoring our influence in global affairs. Guided by our shared values of democracy, freedom, human rights and the rule of law, our Government will continue Canada’s international leadership through concrete actions that bring results.<sup>29</sup>

Often, the discourse of security opens the gates for political elites to contrast political events in terms of ‘good’ and ‘evil’. Consider this statement by Stephen Harper on

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<sup>27</sup> “Promoting Opportunity for New Canadians”. May 12, 2006.

<http://pm.gc.ca/eng/media.asp?category=2&id=1159> Accessed January 30, 2008.

<sup>28</sup> Stephen Harper’s Priorities. <http://pm.gc.ca/eng/feature.asp?featureId=5> Accessed January 30, 2008.

<sup>29</sup> Speech from the Throne, October 16, 2007. <http://www.sft-ddt.gc.ca/eng/media.asp?id=1368> Accessed January 30, 2008.

September 11, 2006: “And because of this war of terror, people around the world have come together to offer a better vision of the future for all humanity.”<sup>30</sup> According to Harper, an effect of terror is a collective rally for humanity; it takes this ‘evil’ to produce a ‘good’. The notion that humanitarian action can be an effect of terror comprises a significant Canadian paradox.

In order to understand this prevalent myth in Canadian imagination, it is important to explore how the idea of Canadian humanitarianism came to be. The idea of Canadian humanitarianism evokes images of peacekeepers, welcoming refugees, respecting diversity and multiculturalism and non-discriminatory immigration policies. The notion of Canadian humanitarianism, although presented by our political elites as part of our memory, gained momentum with legislative changes to immigration laws under Liberal Prime Ministers Lester B. Pearson and Pierre Elliott Trudeau in the 1960s and 1970s. In order to understand what kind of changes were made and how they differed from exclusionary tactics of the past, it is worthwhile to consider the pre-existing political context for these changes.

### **Pre-Humanitarian**

Despite political rhetoric to the contrary, Canadians were not afraid to exclude people from our country on racial and biological grounds. Initially, in the very first stages of immigration, Canada was populated through generally free-entry policies with its first Immigration Act in 1869; however, by 1872, the Act was amended to prohibit criminals and other vicious classes from entering into the country. Several overtly racist and

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<sup>30</sup> “Prime Minister Harper Honours 911 Victims and restates Canada’s Commitment to Fighting Terror”. September 11, 2006. <http://pm.gc.ca/eng/media.asp?id=1312> Accessed January 30, 2008.

discriminatory historical events took place, which demonstrated that only certain kinds of people were welcome in Canada. Some examples include: the imposition of a Chinese Head Tax after many Chinese workers came over to work on the Canadian Pacific Railway in 1885, changes to the definition of immigrants in Canadian legislation and public racist sentiment demonstrated through riots and protests. Specifically, changes in 1906 to the Immigration Act provided a definition of immigrant that barred individuals such as prostitutes, the mentally retarded, epileptic, insane, contagious, the deaf and the blind.<sup>31</sup> In 1908, the Laurier government introduced an amendment to the Immigration Act known as the “continuous journey regulation” which stipulated that all immigrants to Canada were required to come directly from their country of origin or citizenship by a continuous journey on a through ticket purchased in that country. By means of this sly tactic, the government succeeded in blocking off immigration from India since there was no direct steamship service from India to Canada. In effect, immigration restrictions did not require explicit racist designations of “undesirable immigrants” overtly laid out in the regulations to get away with implicitly racist technologies and tactics.<sup>32</sup> Such legislative changes occurred in the aftermath of race riots in Vancouver, which specifically targeted Asian businesses and gathering places. Evidently, Canada’s past does not reflect a clear history of respect for diversity or a nation where people feel at home and live in harmony.

### **Limited Humanitarianism**

Looking to the past, Canadian leaders did not look favourably upon immigrants who were deemed difficult to assimilate. As one example, Canada did not welcome

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<sup>31</sup>Valerie Knowles. *Strangers At Our Gates: Canadian Immigration and Immigration Policy 1540-2006*. Toronto: Dundurn Press, 2007. p.107-108.

<sup>32</sup> Knowles, 2007, p. 121.

immigrants of African ancestry to Canada. Social gospel clergyman J.S. Woodsworth stated: the “very qualities of intelligence and manliness which are essential for citizenship in a democracy were systematically expunged from the negro race through two hundred years of slavery”.<sup>33</sup> What is particularly unsettling about this statement, beyond its explicit racism, is that J.S. Woodsworth was the first leader of the Cooperative Commonwealth Federation (CCF), which later formed the National Democratic Party (NDP), Canada’s left-wing socialist political party. Journalist Pierre Berton described both the CCF and NDP as the “conscience of Canada” for their progressive social values and ideas.<sup>34</sup> Woodsworth’s book *Strangers Within Our Gates* demonstrates the social ideas and assumptions that influenced the attitudes of many Canadians regarding immigration, which depicts elements of our “humanitarian” past.

J.S. Woodsworth advocated that all potential Canadian citizens must be evaluated according to fair and common standards. The “common standard” that Woodsworth and other political elites of the time promoted referred to inherently white, Anglo-Saxon values. Despite Woodsworth’s attempts to demonstrate a welcome gospel of openness and tolerance, his efforts were defined within the context of a racist nationalism. Woodsworth outlined the need to cultivate Canadian citizens and depicted a concern with immigrants as potentially threatening to this process. He argued that Canada had many problems, but that they all dwindled into insignificance “before the one great, commanding, overwhelming problem of immigration” as of “vital importance to us are the character, the welfare and the development of the peoples who are to be the people of

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<sup>33</sup> J.S. Woodsworth, *Strangers Within Our Gates*. Toronto: University of Toronto Press, 1972. p. 158.

<sup>34</sup> “The Greatest Canadian”. CBC online. [http://www.cbc.ca/greatest/top\\_ten/nominee/douglas-tommy-know.html](http://www.cbc.ca/greatest/top_ten/nominee/douglas-tommy-know.html) and CBC archives: [http://archives.cbc.ca/IDC-1-74-851-4968/people/tommy\\_douglas/clip7](http://archives.cbc.ca/IDC-1-74-851-4968/people/tommy_douglas/clip7) Accessed February 6, 2008.

Canada”.<sup>35</sup> Woodsworth argued that many foreigners lacked the kind of quality that Canada required.

Writing in 1908-1909, Woodsworth believed that only the most intrinsically valuable foreigners should be welcome to Canada. He stated that:

It is extremely undesirable that thousands of foreigners of questionable value from a mental, moral and physical point of view should be allowed to freely invade well-governed and prosperous communities. They underbid the labour market, raise important and vexatious municipal questions, strain charitable resources to the utmost, increase the cost of government, expose a healthy people to contagious diseases common to the poorer classes of Europe, corrupt the body politic and in every way complicate a situation none too simple at best.<sup>36</sup>

There are many implications of his claims for the kind of citizen allowed to make a home in Canada. First, Woodsworth outlined the perspective that foreigners would be of “questionable value”, referring to a “mental, moral and physical” (biological) point of view. In effect, questioning an individual’s worth according to biological standards implied a form of discrimination. Further, this discrimination reveals discretionary Canadian standards for what constitutes “mental, moral and physical” value and the power of discretion in separating worthy from unworthy beings. This quote also reflects fear that immigrants would “invade well-governed and prosperous communities”. Even this great leader of socialism in Canada perpetuated this fear of immigrants as threats to the labour market, public health and organized communities. Immigrants in this regard were posited as taking *away* from Canadian society in contrast to *bringing* something to the polis. They were seen as lacking desirable attributes necessary for productivity, as well as potentially detrimental beings that were infectious and of low moral character. Immigrants, as potential ruptures to a harmonious Canadian way of life, were seen as

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<sup>35</sup>Woodsworth, 1972. p. 162.

<sup>36</sup> Ibid., p. 180.

fatal barriers to the highest national life.<sup>37</sup> Evidently, Canadian history has not always demonstrated multicultural acceptance and respect for difference.

During this time of early immigration to Canada, many were concerned that Canada would be a dumping ground for criminals, prostitutes, the mentally unstable and poor. Woodsworth feared that England's poor and juvenile delinquents would be transplanted to Canada.<sup>38</sup> To enter Canada and gain citizenship as an immigrant was certainly not easily facilitated by the state. Woodsworth wrote in 1909 that the immigrant found himself carried along with the crowd, faced with tedious examinations. These examinations included first of all, the medical examination, then passing through what was known as the "cattle pen", a series of iron-barred rooms and passage ways. Here, the immigrants had to go in single file and pass before various officials who questioned them as to their nationality and destination and the amount of money they had in their possession; in effect, these processes reflected a weary, anxious time for newcomers to Canada.<sup>39</sup> Those who managed to survive this process were to be commended. In consolation, Woodsworth reflected that such experiences demonstrated courage and endurance, as these processes could not but develop a high type of character.<sup>40</sup> Those who did not make it past these technologies were simply of lower mental, physical and moral character and undesired as citizens Canada.

In British Columbia, the issue of immigration was especially of concern to Canadians. Woodsworth argued that an "immigration problem" specific to British

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<sup>37</sup> Woodsworth, 1972, p. 181.

<sup>38</sup> Ibid., p. 51.

<sup>39</sup> Ibid., p. 34.

<sup>40</sup> Ibid., p. 42.

Columbia, the “Oriental question”, was of grave concern.<sup>41</sup> He wrote that it was difficult for the rest of Canada to really appreciate the seriousness of the problem, although it was realized to some extent when the news of the Vancouver race riots caused a media stir. As a proposed solution, Woodsworth claimed that as long as immigration from the orient was “confined to a few odd Chinamen a year, who were quite content to do work distasteful to a white man”, there should be no objection; however, trouble arose when the Japanese and Hindus started “pouring into British Columbia by the thousands”.<sup>42</sup> In an attempt to contextualize the problem, Woodsworth wrote: “if the cities of Montreal and Toronto were to see a thousand Japanese a week landing on their docks, they would probably have more sympathy with the people of the far Canadian West”.<sup>43</sup> Racism in Canada was especially strong against the Asian community.

The notion of the “Oriental problem” began when Chinese labourers came to work on the railway in the late 1800s. The Chinese community was seen as disrupting the aesthetic of urban centres. According to Woodsworth the Chinese were not particular as to the locality or the character of the dwelling; however, “the result is that while Chinatown is generally in the heart of the city, it is the most unattractive, squalid and forlorn of all places one can find”.<sup>44</sup> As the presence of the Chinese community made the city look different, the physical aesthetic of a different ethnicity provided a visible contrast for Canadians who considered these individuals to be “strangers”:

In the streets you see the children with bright, black sparkling eyes they scurry out of the way of the white visitor, showing thus early that they have learned the bitter lesson that they are strangers in a strange land. It is pleasing to hear words of our own tongue from these little strangers, and one

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<sup>41</sup> Woodsworth, 1972, p. 142.

<sup>42</sup> Ibid., p. 142.

<sup>43</sup> Ibid., p. 142.

<sup>44</sup> Ibid., p. 158.

is reminded that some of them are as much Canadian as are we of Anglo-Saxon speech.<sup>45</sup>

The assimilation of these strangers was necessary for the betterment of Canadian society according to Woodsworth. Only once these “strangers” learnt to speak in “our own tongue” could they possibly become Canadian.

Not only were the Orientals problematic, but other races provoked distinct commentary as well. Those of African and Indigenous descent also appeared in discussions of “social problems”. Woodsworth stated that although these groups were not immigrants, “they are so entirely different from the ordinary white population that some mention of them is necessary if we would understand the complexity of our problems.”<sup>46</sup> Such overt racism was commonplace at this time in Canada. William Scott, superintendent of immigration from 1903-1924 shared Woodsworth’s concerns about the ‘Negro population’ facing the United States. In 1912, he stated that this problem:

[as] Abraham Lincoln said could be settled only by shipping one and all back to a tract of land in Africa, is one in which Canadians have no desire to share. It is to be hoped that climatic conditions will prove unsatisfactory to those new settlers and that the fertile lands of the West will be left to be cultivated by the white race only.<sup>47</sup>

Another example of this explicit racism occurred on May 23, 1914. That year, 376 prospective East Indian immigrants arrived in Vancouver harbour on board the Komagata Maru, a ship contracted by a wealthy Sikh merchant from Hong Kong. For two months. The vessel remained in the harbour with its human cargo while the legality of a federal exclusion order was tested in provincial courts.<sup>48</sup> Finally two months later, once the passengers were facing starvation, the British Columbia courts made the decision to deport everyone aboard the ship except a few passengers who were Canadian residents.

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<sup>45</sup> Woodsworth, 1972, p. 158.

<sup>46</sup> Ibid., p. 158.

<sup>47</sup> Knowles, 2007, p. 118.

<sup>48</sup> Ibid., p. 121.

With Canadians cheering at the Vancouver docks, Canada's HMCS Rainbow escorted the Komagata Maru to international waters.<sup>49</sup> Canadian public officials were concerned with having only a certain kind of individual in Canada. Unless an immigrant was a white Anglo-Saxon, they were likely to be considered by the Canadian public as a potential problem.

Immigrants were also commonly perceived as public health threats and stigmatized as disease-bearing individuals. The physical make-up of foreigners was a significant concern for Canadians. In the early 1900s, no immigrant was permitted to land in Canada who was deemed to feeble-minded, an idiot, epileptic, insane or had an attack of insanity within five years of immigration.<sup>50</sup> As a result, medical inspections became stricter. During the fiscal year 1906-07, many immigrants were deported for biological reasons. Some examples included: being of "bad character" insanity, tuberculosis, failing eyesight, being determined as "physically and mentally weak", ulcers, varicose veins, deafness, dumbness, old age, being crippled, being "immoral", pregnant, having "vicious tendencies" and "likely to become a public charge."<sup>51</sup> Evidently, discretion played a large role in the screening of potential citizens to Canada. Should an immigrant, within two years of landing in Canada, become a public charge, or an inmate of a penitentiary, prison, or hospital or other charitable institution, according to legislation, this individual would become subject to ministerial notification. On receipt of information about a particular case the Minister could order the deportation of such immigrants.

The use of statistics provided essential justification for this biological

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<sup>49</sup> CIC "Forging Our Legacy". The Komagata Maru Incident.

<http://www.cic.gc.ca/ENGLISH/resources/publications/legacy/chap-3a.asp#chap3-8>

Accessed February 13, 2008.

<sup>50</sup> Knowles, 2007, p. 172.

<sup>51</sup> Woodsworth, 1972, p. 200-202.

discrimination. Demonstrating common (mis)perceptions about immigrants, Woodsworth claimed that:

Statistics in the United States show that the foreign-born 'furnished two and one-third times their normal proportion of insane. They have been the cause of epidemics and of the spread of much infection...Favus and trachoma were practically unknown in the United States before the immigration from Southern and Eastern Europe...Probably the worst effect of immigration upon the public health is not the introduction or spread of acute diseases, but of large numbers of persons of poor physique who tend to lower the general vigor of the community.<sup>52</sup>

This quote has several implications. First, it highlights the stigma associated with immigrants being disease-carriers. Second, this demonstrates the powerful technology of statistics to perpetuate this stigma. Third, this quote depicts the racist perception that those from certain regions of the world with poor physique would be more detrimental to Canadian society. The use of one form of statistics, medical examinations and the political impact of these diagnostics, will be further evaluated in the second chapter of this thesis.

Although political leaders of our current time do not like to bring this up in contemporary debates, it is clear that Canada has a racist and discriminatory past. This past often gets overlooked in contemporary speeches praising the ethic of Canadian humanitarianism. In order to grasp how this discourse came into being, it is important to evaluate changes to foreign policy and immigration since the early 1900s to the present time as political elites attempted to re-brand Canada into a humanitarian nation. While discussions about humanitarianism, peacekeeping, multiculturalism and respect for diversity within Canada gained momentum with the Liberal governments of Lester B. Pearson and Pierre Elliott Trudeau, the accuracy of the rosy Canadian picture was in question then and remains in question today.

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<sup>52</sup>Woodsworth, 1972, p. 192.

## Humanitarian Discourse in Canada's Post-War Era

Canada's immigration remained very restrictive until a few decades after the Second World War. Racist sentiment also prevailed during this time and ethnic origin was a feature of the immigrant screening process. In 1952, Canadian immigration policy continued to be guided by overtly exclusionary discourses. This was especially the case for people of African descent. For example, the minister responsible for immigration, Walter Harris argued that newcomers from countries like Barbados "are more apt to break down in health than immigrants from countries where the climate is more akin to that of Canada".<sup>53</sup> Political elites did not shy away from discrimination and direct racism. In addition, despite the experience of Jewish victimization in Europe, Canadian officials routinely rejected Jewish applicants.<sup>54</sup> Slowly, these policies began to change, but many years after the end of the Second World War.

During the post-war boom period, 1947-1957, several attempts were made by the government to ease immigration restrictions. Under the leadership of Louis St. Laurent, the Liberal government amended immigration legislation in 1952 to admit not only unsponsored refugees and displaced persons but ordinary immigrants from various countries. When the Conservatives took power under Diefenbaker in 1957, the party pledged to overhaul the 1952 Act's administration to ensure that humanity will be considered and put an end to bureaucratic interpretations which keep many potentially good citizens out of Canada.<sup>55</sup> Despite these changes, the government maintained a

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<sup>53</sup> Knowles, 2007, p. 169.

<sup>54</sup> Ibid., p. 165.

<sup>55</sup> Ibid., p. 179.

steady control over the meaning of such a “good citizen” at the expense of many excluded from Canadian citizenship.

Some significant changes to policies of inclusion and exclusion occurred during this post-war era. Canada was faced with many displaced persons in the aftermath of this war. Canada’s exclusionist immigration policy took a “sharp relief” due to the presence of over a million refugees from Europe.<sup>56</sup> As a result, demands for a more “humane” immigration policy multiplied as increasing numbers of Canadians who reacted to the plight of displaced persons called for the prompt admission of these people on the grounds of simple human decency. On May 1, 1947, Mackenzie King read a statement on immigration that “the policy of the government is to foster the growth of the population of Canada by the encouragement of immigration” but to appease the skeptical Canadian, King added that the number of new arrivals would be related to the “absorptive capacity” of the Canadian economy, which would change from year to year.<sup>57</sup> Despite political rhetoric of fostering a more humane immigration policy after the major world wars, exclusionary practices remained a key feature of this program and the “humanitarian program” became more closely tied to principals of economic interest.

Even the humanitarian elements of refugee policy coincided with bringing economic advantage to Canada. During the summer of 1947, immigration, medical, security and labour officials went from one displaced persons’ camp to another, interviewing people living out of suitcases and trunks of cars trying to select able-bodied refugees, with a preference for strong young men who could do manual labour and not be

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<sup>56</sup> Knowles, 2007, p. 157.

<sup>57</sup> *Ibid.*, p. 163.

encumbered by aging relatives.<sup>58</sup> Clearly, an individual's potential value to the Canadian society has historically been evaluated according to biological and economic standards. An individual's worth was defined by economic value even during this supposed humanitarian time.

During an era of high unemployment, in 1963, Canadians elected Lester B. Pearson as Prime Minister. As a result of this uncertain economic environment, immigration policies came under significant scrutiny and review. Changes to immigration policy increasingly emphasized skills and personal attributes of prospective immigrants. In 1967, Canadians received a new Act, which introduced the points system. This points system attempted to make the immigration process more egalitarian and streamlined. The points system was also in place under the leadership of Prime Minister Trudeau, elected in 1969. One of Trudeau's narratives was the promotion of "multiculturalism"; however, arguably this great ideal operated as a cover for his bilingualism agenda. It is questionable whether there has ever been true commitment by any government in Canada to respect diversity and multiculturalism.

In 1976, we received a new Immigration Act, which included the points system and provided the framework for immigration policies and practices until the introduction of the Immigration and Refugee Protection Act in 2001. The 1976 Act outlined the principles and objectives of Canadian immigration policy: to promote Canada's demographic, economic, cultural and social goals; family reunion; the fulfillment of Canada's international obligations in relation to the United Nations Convention (1951)

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<sup>58</sup> Knowles, 2007, p. 165.

and non-discrimination in immigration policy.<sup>59</sup> The second chapter of this thesis will review contemporary immigration technologies to evaluate how these seemingly inclusive social goals are operationalized within exclusionary and discriminatory tactics.

Since the early 1900s, the composition of Canadian society has been made according to some artistic craft. Political leaders from all political stripes pledged a need for the state to actively regulate immigration. Even the social justice advocates of our past, such as CCF founder J.S. Woodsworth, envisioned highly regulated immigration. According to Woodsworth: “Essentially non-assimilable elements are clearly detrimental to our highest national development and hence should be vigorously excluded.”<sup>60</sup> This seems a distant picture from the humanitarian policies of multiculturalism and respect for diversity that political leaders pledge to today.

In 1910, “An Act Respecting Immigration”, gave cabinet unlimited discretionary powers to issue orders-in-council to regulate the composition of immigrants destined to become Canadian citizens.<sup>61</sup> This Act enabled cabinet to prevent entry of immigrants who belonged to any race deemed “unsuited to the climate or requirements of Canada”.<sup>62</sup> These discretionary powers did not disappear from Canadian legislation until 1978; however, by 1967, “all vestiges of discrimination had been removed from immigration regulations”.<sup>63</sup> The second part of this thesis evaluates changes to immigration regulations and their “non-discriminatory nature” since the introduction of the points system.

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<sup>59</sup> Knowles, 2007, p. 208.

<sup>60</sup> Woodsworth, 1972, p. 232.

<sup>61</sup> Knowles, 2007, p. 110.

<sup>62</sup> *Ibid.*, p.111.

<sup>63</sup> *Ibid.*, p. 111.

Early in 2001, the government introduced Canadians to the Immigration and Refugee Protection Act. At that time, immigration minister Denis Coderre declared that the Act had to rectify a major shortcoming: that the regulations governing the skilled worker program needed to evaluate potential applicants based on human capital attributes.<sup>64</sup> The emphasis on this act was enhancing the pre-existing points system to include human capital, which would not be strictly based on education and employment. Despite some changes to this Act in the area of Canada's humanitarian elements, specifically the resettlement of refugees, the discourse of humanitarianism did not provide genuine impetus for the program. It remained focused on the language of economics under the guise of humanitarianism.

In the present time, Canada claims to be a leader in refugee resettlement. Canada consistently ranks as one of the United Nations Human Rights Commission (UNHCR) top three resettlement countries and has resettled 750,000 refugees and persons in refugee-like situations since the end of the Second World War.<sup>65</sup> However, as Shauna Labman argues in her LLM dissertation, humanitarianism is a powerful myth, even in Canadian refugee resettlement policy.<sup>66</sup> Labman examines Canadian overseas processing manuals in her analysis of how a discourse of humanitarianism guides policy resettlement decisions. This discourse, she demonstrates, although claiming to uphold "Canada's humanitarian tradition" is conveniently vague, hollow and overtly discretionary. Furthermore, the policy outlines detailed criteria for visa officers to consider when evaluating refugees, namely "their resourcefulness and other similar

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<sup>64</sup> Knowles, 2007, p. 258.

<sup>65</sup> Labman, Shauna. LLM Thesis, Chapter 5: "Humanitarianism and Half Open Doors: Canada's Resettlement Policy". University of British Columbia. Defence: August 2007. p. 83.

<sup>66</sup> Labman, 2007, p.85.

qualities that assist in integration in a new society”.<sup>67</sup> As Labman argues, this resettlement program can be criticized for being an adjunct of the independent migrant program, which selects able-bodied migrants who would be quick to assimilate and produce for Canada. Immigrants and refugees alike have been evaluated according to their potential to be in good health, self-sufficient and productive in Canada.

The current Immigration and Refugee Protection Act was introduced February 2001, prior to the events of September 11, 2001. Although the Act was introduced prior to the events of September 11, it reflects a climate of fear, specifically about fraudulent immigrants and undeserving refugees. Subsequent chapters of this thesis will analyze changes to legislation and policy, which highlight the complex interplay between a discourse of humanitarianism and security concerns. Therefore, by evaluating changes to immigration policy in this context, this thesis evaluates whether we have witnessed a security rupture to the more egalitarian, humanitarian immigration policies prior to our “new” era of securitization.

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<sup>67</sup>Labman, 2007, p. 104.

## Chapter 2 - Immigration Technologies and Biological Management

Despite the movement and flows of globalization, immigration technologies remain an area where the nation-state continues to exercise sovereignty through the selection and control of who enters and exits the country. With globalization, the best immigrants are desirable; these immigrants are the immigrants who can enhance Canada's competitive position in a world economy. This chapter begins by examining how these technologies have shifted from being overtly racist and discriminatory to becoming more humanitarian and "liberal" over the last few decades. This chapter highlights how although the contemporary technologies of immigrant evaluation are more liberal, policies and practice remain in place with the foundational assumptions from a past more discriminatory era. The first chapter of this thesis discussed past overt discrimination for potential citizens based on racial and biological grounds. This chapter builds on these assumptions to evaluate the assemblage of medical screening technologies for new immigrants today.

In *Selling Diversity*, Yasmeen Abu-Laban and Christina Gabriel present a critique of Canada's neoliberal migration agenda. They argue that since the 1990s, Canadian policy prescriptions for immigration, multiculturalism and employment equity equate globalization with global markets. In this agenda, potential citizens from diverse backgrounds are commodified and required to justify their unique skill and talent according to the language of the market. Using a critical policy approach, the authors argue that Canada falls short on its alleged commitment to social justice in a multicultural and diverse society.

In this chapter, I review Abu-Laban and Gabriel's discussion of immigration and

multiculturalism policy with an eye for their discussion of the relationship between neoliberal market principles migration. Building on this review, I evaluate how these processes apply to the medical sphere. Specifically, I will focus on the case of Canada's medical screening program and how these technologies operate vis-à-vis the discourse of liberalism yet replicate the sovereign exclusions embedded within historical assumptions about immigrants. Finally, I evaluate how immigrant medical examinations operate upon exclusionary assumptions about immigrants and citizens from the past; yet, operate through a new technological frame in the spirit of protecting the population at large, keeping the population productive and preventing entry of any potential risk or threat.

The language of competitiveness, markets, efficiency and economic principles are central to Canadian immigration policy. Abu-Laban and Gabriel argue that this is a direct response by Canadian policy-makers to the “perceived exigencies of globalization – namely capturing global markets and enhancing Canada's competitiveness”.<sup>68</sup> In an attempt to define the concept of globalization, Abu-Laban and Gabriel highlight some of the issues that arise out of discussions of economic, technological and cultural changes in our international business climate. They argue that globalization can be defined as the shift in investment, production and trade decisions from serving national markets to serving world markets.<sup>69</sup> Such a shift involves an enlargement and extension of markets, greater capital mobility, flows of migrant workers and production processes encompassing multiple assembly points in a variety of countries and locales. The discourse of globalization constitutes a framework for languages and ideas effected through political discussion and policy development.

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<sup>68</sup> Yasmeen Abu-Laban and Christina Gabriel. *Selling Diversity: Immigration, Multiculturalism Employment Equity and Globalization*. Peterborough: Broadview Press, 2002. p. 12.

<sup>69</sup> Abu-Laban, and Gabriel. 2002. p. 16.

For the purpose of this paper, a key focus on the discourse of globalization here refers to the movement of individuals within and between countries and how this movement operates through processes of inclusion and exclusion. People cross state boundaries to fill labour market positions (such as guest workers, temporary workers and immigrants); however, the concept of a migrant also includes refugees, families of immigrants and refugees, refugee claimants, international students, exiles and tourists.<sup>70</sup> International mobility is not something novel or new; however, it is more easily facilitated with the development of technology, including high-speed trains and airplanes. Although these processes do not present a radical break from the past, immigration to Canada is an increasing priority for the Canadian government and one that should not escape critical political review.

The discourse of globalization coincides with the expansion of neoliberalism. As Abu-Laban and Gabriel define, the term ‘neoliberal’ includes assumptions about a limited role for the state and an emphasis on cutting back state policies and programs. It also requires individual self-sufficiency and a belief that free markets are efficient allocators of goods and services. Key values affiliated with neoliberalism include the market principles of competitiveness, efficiency, choice and consumerism. As this chapter evaluates, neoliberal assumptions are embedded within contemporary Canadian citizenship and immigration policy.

Canada, a modern, neoliberal nation-state, faces international pressures to achieve economic prosperity in an era of globalization. As a result, public policy must correlate to the stated governmental objectives, in particular, enhancing Canadian prosperity. Abu-

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<sup>70</sup> Abu-Laban and Gabriel, 2002, p. 17.

Laban and Gabriel argue that Canada celebrates diversity insofar as it pertains to enhancing competitiveness and productivity. Their main concern here is with the lack of commitment to the broader responsibility of social justice regarding diversity. They claim: “a commitment to enhance justice and respect in a diverse society, while not abandoned entirely, has been muted”.<sup>71</sup> While I share their concern, I am further uneasy with how the pledge to social justice itself propagates exclusionary practices.

Following Max Weber, Abu-Laban and Gabriel articulate that the state can be understood by social scientists as a set of institutions, including the government of the day, parliament, the bureaucracy, courts and the military. The state, in this respect, is the highest authority of a given territory for which it has sovereignty over. Furthermore, the state is a key player in determining how identities are formed and fixed, which inevitably produce exclusions as some identities are deemed irrelevant and consequently ignored. Since Confederation, the movement of people from abroad to Canada and selection of those worthy of Canadian citizenship has been a significant issue. It is a worthwhile investigation to review historical policies and discourse about foreigners, or “strangers” to help us understand the present.

### **Historical Review of Canadian Immigration Legislation**

As this thesis introduced in the first chapter, early immigration policy explicitly expressed a distinction between (un)desirable Canadian citizens. These sentiments were clearly put by one immigration superintendent that immigrants to be sought after were

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<sup>71</sup>Abu-Laban and Gabriel, 2002, p. 12.

“men of good muscle who are willing to hustle”.<sup>72</sup> Jurisdiction over immigration and agriculture combined in Canada was set out in section 95 of the British North America Act (BNA Act), now the Constitution Act of 1867. This Act gave joint responsibility to both the federal and provincial government, with federal paramountcy for immigration. In 1869 the Canadian parliament passed the first act specifically dealing with immigration. It wasn't until 1872 when the act was amended to prohibit the entry of other vicious classes into the country and finally in 1879 an order-in-council was passed to exclude paupers and destitute immigrants from entering.<sup>73</sup> The Department of Agriculture was responsible for immigration in the late 1800s, demonstrating a strong link to a particular kind of desired migrant. Specific categories of the “desirable” were outlined, excluding those of “sedentary” occupation, including mechanics, artisans and tradesmen.<sup>74</sup> The most desirable migrants were those that could directly produce for the nation and contribute to its economic prosperity.

In the early stages of migration during the late 1880s, we “accepted” migrants to fill labour needs such as for the Canadian Pacific Railway when Chinese labourers were recruited to specifically work on the most dangerous and well-paying jobs. Following completion of the railway, the 1885 Chinese Immigration Act was passed, which imposed a head tax on Chinese migrants, making it more difficult for their entry to Canada.<sup>75</sup> During the same time, the Canadian government also passed an act depriving the Chinese in Canada the right to vote. Immigration legislation and discourse at the time of Confederation contained overt discrimination. This continued for many years.

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<sup>72</sup> Valerie Knowles. *Strangers At Our Gates: Canadian Immigration and Immigration Policy 1540-2006*. Toronto: Dundurn Press, 2007. p.69.

<sup>73</sup> Knowles, 2007, p. 71.

<sup>74</sup> *Ibid.*, p. 69.

<sup>75</sup> Abu-Laban and Gabriel, 2002 p. 38.

Good agricultural settlers were historically the most desired citizens in Canada. Clifford Sifton, Minister of the Interior in 1896 outlined the desired citizen. This citizen is “a stalwart peasant in a sheepskin coat born to the soil, whose forefathers have been farmers for ten generations, with a stout wife and a half-dozen children.”<sup>76</sup> In the early 1900s, many Canadians already living in Canada were distrustful of the new immigrants who they perceived as taking away jobs. James Wilks, vice-president of the Trades and Labour Congress wrote Prime Minister Laurier, requesting that the government enforce the Alien Labour Act to prevent Canada from being inundated with ignorant and unfortunate aliens.<sup>77</sup> This fear depicts the social climate when the 1906 Immigration Act was introduced. This act outlined the undesirable category further to include prostitutes, the mentally retarded, epileptic, insane, afflicted with contagious disease and any individual who was deaf, dumb, blind or infirm unless belonging to a family accompanying him or already in Canada.<sup>78</sup> In 1910, Parliament gave the cabinet self-imposed power to sift through desirable candidates for citizenship. Cabinet had unlimited discretionary powers to issue orders-in-council to regulate the volume, ethnic origin or occupational composition of immigrants destined for Canada.<sup>79</sup> This legislation gave the Immigration Branch tools to include immigrants into Canadian society as it saw fit.

In the post World War era, as a result of the government’s concern regarding the lack of unskilled workers in the Canadian labour force, the Department of Manpower and Immigration was introduced in 1966. Shortly thereafter, in an attempt to make

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<sup>76</sup> Knowles, 2007, p. 91-92.

<sup>77</sup> Ibid., p. 103.

<sup>78</sup> Ibid., p. 107-108.

<sup>79</sup> Ibid., p. 110.

immigration less discriminatory, the government introduced the points-system in 1967.

Signaling the government's intent to link immigration closer to the labour market, Prime

Minister Pearson said:

Immigration policy must be administered in the interests of the country and of the immigrants themselves in a context that takes into account the entire position of employment, training and placement in Canada. The association of various aspects of manpower policies under the same minister should make it easier to implement programs and to implement them more effectively.<sup>80</sup>

From this political context, we received the (neo)liberal technology of the points system.

The points system, which remains today, assesses all immigrants along skills and education criteria. It was formally introduced in 1976 with a new Immigration Act. This Act introduced three categories of migrants: independent, refugees and family class. Only independent immigrants are evaluated according to the points-system. Prior to the points-system, immigration officers made their determinations based primarily on level of education.<sup>81</sup> The points system functioned as one avenue to streamline the process and make it more objective and egalitarian. However, discretion and more implicit forms of discrimination prevail in the contemporary context. The next section of this thesis evaluates discriminatory assumptions that remain today.

The intent of our current Canadian citizenship and immigration regime is outlined in the 2001 Immigration and Refugee Protection Act. The first goals appear to line up with the nice or gentle Canadian humanitarian objectives such as pursuing maximum social, cultural and economic benefits of immigration and enriching the social and cultural fabric of Canadian society. These goals are outlined along the government's intent to further the domestic and international interests of Canada. Specifically, the objectives of Canada's citizenship and immigration program include:

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<sup>80</sup> Knowles, 2007, 192.

<sup>81</sup> Ibid., p. 195.

- 3 (1) The objectives of this Act with respect to immigration are
- (a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
  - (b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;
  - (c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;
  - (d) to see that families are reunited in Canada
  - (h) to protect the health and safety of Canadians and to maintain the security of Canadian society;
  - (i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks [...]<sup>82</sup>

This clause depicts the productive inclusive language of a socially conscious immigration program; however, it appears next to an even stronger language about economic clout.

Current policy directions suggest that Canada is opening its doors to individuals with ‘human capital’, to those people who are highly-skilled, well-educated and perceived as self-sufficient. In 2001, new legislation outlined the need for rectifying the regulations over the skilled worker program. Specifically, an applicant’s eligibility now included abilities or attributes outside of occupation status. In the words of Mark Davidson, a Director for Economic Policy and Programs for Citizenship and Immigration: “it is the whole collection of an individual’s abilities that allows them to function in a society”.<sup>83</sup> Attributes in the human capital category include language proficiency, work experience, age and adaptability.

The language of skills and economic benefit forms the crux of Canadian immigration policy. The points system evaluates independent immigrants who are not covered by the family or refugee class and designates points for education, vocational training, occupation and work experience. An applicant must achieve approximately 67

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<sup>82</sup> Immigration and Refugee Protection Act 2001. <http://laws.justice.gc.ca> S. 3

<sup>83</sup> Knowles, 2007, p. 259.

out of 100 points possible.<sup>84</sup> The immigration system functions with the tenets of the liberal modern state. It assumes that the skills of applicants, which comprise their entire worth as potential Canadians, are mathematically measurable.<sup>85</sup> The points system places immigration within labour market requirements and business interests. Despite the goal to remove the racial and hierarchical language with the formal introduction of the points system in 1976, immigration technologies today operate within the paradigm of preexisting exclusive assumptions about migrants.

Contemporary immigration technologies demonstrate the state's emphasis on economic productivity as essential for potential citizens. In effect, the state imposes assumptions and expectations about productivity on outsiders attempting to gain access inside the state. As the state demarcates between the insiders and the outsiders, valued beings and non-valued beings, these exclusions reveal some assumptions about a qualified form of citizen and further, a qualified form of existence. As Aristotle articulates, we become political by entering into associations, in effect, we become political by becoming citizens. We come into associations for the sake of *life itself*.<sup>86</sup> This thesis asks: if being political requires citizenship, then what kind of political form and space is excluded from the category of the citizen? Evidently, some forms of exclusion and discrimination remain embedded within the sovereign goals of the state. The next section of this chapter looks at the process of medical examinations as an assemblage of governmental technologies which operate to (re)produce sovereign processes of inclusion and exclusion as the state manages life in an attempt to screen worthy citizens.

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<sup>84</sup> CIC. "How do I apply as a skilled worker?" [Immigrating to Canada](http://www.cic.gc.ca/english/faq/immigrating-5.html#5_1). [http://www.cic.gc.ca/english/faq/immigrating-5.html#5\\_1](http://www.cic.gc.ca/english/faq/immigrating-5.html#5_1) Accessed November 26, 2006.

<sup>85</sup> Yasmeen Abu-Laban. "Keeping 'em Out". [Painting the Maple](#). Edited by Veronica Strong-Boag et. Al. Vancouver: UBC Press, 1998. p.75.

<sup>86</sup> Aristotle. [The Politics](#). Trans. By T.A. Sinclair. London: Penguin Classics, 1962. p.187.

## Biology and Borders

Immigration and citizenship technologies in Canada separate qualified and worthy citizens from unqualified, unworthy lives. Not only does the state divide its population into citizens and foreign nationals, but the state also divides people into dichotomous categories of the healthy and the sick. In *Illness as Metaphor*, Susan Sontag states: “illness is the night-side of life, a more onerous citizenship. Everyone who is born holds dual citizenship, in the kingdom of the well and in the kingdom of the sick”.<sup>87</sup> Sontag discusses how the metaphor of illness operates to formulate a certain (mis)perception about people. She evaluates two diseases in particular, tuberculosis (TB) and cancer and the stigmas that are associated with these illnesses. Her research illuminates the myth about these diseases and how this myth places the onus of responsibility for one’s health on the individual rather than society or the state.<sup>88</sup> Illness is depicted as a negation of self-responsibility and a negative consequence resulting from reckless self-conduct.

This conception of health discourse appears in immigration policy. Public health policies as well as citizenship and immigration law, policy and practice have historically and continue today to operate as spatial forms of exclusion, integral to forming the Canadian nation. Since the end of the 19<sup>th</sup> Century in Canada, these racialized technologies aimed at the metaphorical and literal separation of ‘citizen’ from ‘foreigner’, ‘clean’ from ‘unclean’ and ‘self’ from ‘other’.<sup>89</sup> In a quest to evaluate the meaning a healthy citizenry, I discuss medical diagnostics at the border. While contemporary health

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<sup>87</sup> Susan Sontag. *Illness as Metaphor*. New York: Picador Publishing, 1977. p. 3.

<sup>88</sup> Sontag, 1977, p.47-48.

<sup>89</sup> Renisa Mawani, “The Island of the Unclean: Race, Colonialism and Chinese Leprosy in BC 1891-1924”. *Law, Social Justice and Global Development*. 2003 (1) p. 4.

screening of migrants reflects historical exclusionary practices, current policy and discursive directions focus on how to use these exclusionary technologies for *inclusive* population-health based strategies. The final section of this chapter evaluates this re-conceptualization of *productive* population management at the border.

### **A Historical Review of Biological Screening in Canada**

One of the earliest depictions of exclusion based on health grounds appears in the case of D'Arcy Island and the relegation of Chinese lepers to this colony of the coast of BC. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, leprosy was considered a serious public health concern, especially on the Canadian West Coast. Medical practitioners and government officials in countries including Canada and the United States stigmatized leprosy as a 'foreign' disease. Many believed that this disease originated in the warmer tropic climates and invaded and infected civilized nations through the bodies of dirty and diseased immigrants.<sup>90</sup> As Renisa Mawani argues, theories about the origins of leprosy were deeply embedded within the province's potent climate of anti-Chinese racism.<sup>91</sup> Consequently, explanations regarding the origins of leprosy in BC were often bound up with fears about unrestricted and unregulated Chinese immigration. Leprosy and Chinese immigration were seen as growing threats to BC's "newly conceived imperial space".<sup>92</sup> In this context of fear, state authorities and medical practitioners argued that leprosy was not indigenous to the region but imported to the settlement colony through the bodies of undesirable foreigners. Furthermore, leprosy was thought almost exclusively to be a

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<sup>90</sup> Mawani, 2003, p. 7.

<sup>91</sup> Ibid., p. 8.

<sup>92</sup> Ibid., p. 8.

Chinese disease.

Chinese migrants in BC were perceived as serious public health threats. Politicians, doctors and bureaucrats in BC argued that the unsanitary habits among the Chinese combined with their “deplorable living conditions were perilous to the colony’s health”.<sup>93</sup> Mawani discusses the response of local residents in BC to this concern that immigrants lived amongst so much filth and neglect of sanitary arrangements that they could not be anything but a danger to public health. Many people argued that Chinese quarters could easily become centres from which contagion would spread and that diseases not otherwise dangerous might readily become epidemic.<sup>94</sup> These public health anxieties stimulated discussions about racial segregation and the need to contain Chinese immigrants in the province and prevent a further influx of aliens. To depict repressive, racist sentiment at the time, Mawani quotes a the *Times Colonist*, 1899:

These lepers [in Victoria] are all Chinamen. If the people of British Columbia had their own way, Chinamen would be excluded from the provinces, but the Dominion government will not allow exclusion...strict provision should be taken to prevent any more lepers arriving in Canada. Every Chinaman should be obliged to pass a medical examination before being allowed to land in this country.<sup>95</sup>

This article reiterates public opinion in the late 19<sup>th</sup> Century and the stigma of leprosy being a “Chinese disease”. This (mis)perception appeared in national immigration and border strategies. These racialized conceptions have severe material consequences, which legitimized and reinforced more rigorous medical inspections of Chinese immigrants and immigrants in general, within and external to the Canadian border. Efforts to control and prevent leprosy in Canada were inseparable from border control policies and practices.

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<sup>93</sup> Mawani, 2003, p. 8.

<sup>94</sup> Ibid., p.8.

<sup>95</sup> Mawani, 2003, p. 9 quoting: ‘The Lepers of Darcey [sic] Island’, *Victoria Daily Colonist*, 5 July 1899, p. 3.

As previously articulated in this thesis, border policies have been tied to biology since confederation. Canadian history is laden with misperceptions about ill health, social inadequacy and racial discrimination. Angus McLaren demonstrates in *Our Own Master Race* that we, as Canadians, happily imagine that our country was spared virulent racism and class-consciousness prevalent in the United States; however, Canada was not immune to eugenic preoccupations.<sup>96</sup> Such preoccupations in the first half of the 20<sup>th</sup> century coloured the discussion of a vast variety of topics ranging from sex instruction, intelligence testing and special education to social welfare, immigration and birth control. McLaren's study illustrates the variety of ways in which assumptions about heredity were historically manifested. He provides biographical accounts of the different Canadian "experts" drawn to eugenics, such as the public health pioneer Helen MacMurchy and geneticist Madge Thurlow Macklin.

In Canada, the primary support for eugenics came from those who believed that an understanding of heredity could improve public health. The most vocal defenders of eugenics were easily located within the medical profession. Doctors were paramount in ensuring that medical sciences could provide more efficient social management. McLaren articulates that throughout the Western world, the early 20<sup>th</sup> century witnessed the triumph of the medical authority and a corresponding rise in the social and political power of the doctor.<sup>97</sup> Many medical professionals at the beginning of the 20<sup>th</sup> century were preoccupied with the physical and mental fitness of the Canadian population.

One expert in particular, Helen MacMurchy was exceptionally vehement in her biological approach to population management. At the 1914 Social Service Congress of

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<sup>96</sup> Angus McLaren. *Our Own Master Race: Eugenics in Canada, 1885-1945*. Oxford: Oxford University Press, 1990. p. 9.

<sup>97</sup> McLaren, 1990, p. 29.

Canada conference, Ms. MacMurchy rose to declare that the problem of defective children could only be solved if special education and medical inspection were complemented by restriction of immigration: “It is well known to every intelligent Canadian” she attested, “that the number of recent immigrants who drift into institutions for the neuropathic, the feeble-minded and the insane is very great”.<sup>98</sup> Many Canadians in the first decades of the 20<sup>th</sup> century were concerned by what these figures saw as a “racial degeneration”. There appeared to be two threats: the first was the reproduction in Canada of the unfit; the second was the immigration to Canada of the unfit.<sup>99</sup> The Canadian social climate was on the one hand in need of migrant labour; yet, on the other hand fearful of the implications of ‘aliens’ to the Canadian population.

Although the federal Department of Health was established in 1919, the government had relied on the medical profession in administering its immigration legislation for decades. Eugenics-minded doctors in the early 20<sup>th</sup> century therefore had real expectations that their lobbying for tougher immigration restrictions reflecting hereditarian concerns would meet with some success.<sup>100</sup> Doctors played a key role in employing eugenic arguments in the immigration debate. Leading medical journals continually expressed a belief that real hereditarian differences could not be overcome by an improvement of the environment. Dr. Charles Hastings, a medical health officer of Toronto asserted that Canada was committing “race suicide” by sacrificing the well-being of its own youth to bring in newcomers. In the *Canadian Journal of Medicine and Surgery* (CJMS), he informed readers that it cost the federal government:

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<sup>98</sup> Quoted in McLaren, *Our Own Master Race*, p. 46. From: Helen MacMurchy, “Defective Children”, *Social Service Congress: Ottawa 1914* (Toronto: ssc, 1914) p. 101.

<sup>99</sup> McLaren, 1990, p. 49.

<sup>100</sup> *Ibid.*, p. 49.

[...] nearly three quarters of a million annually for immigration purposes alone. Thousands are being imported annually of Russians, Finns, Italians, Hungarians, Belgians, Scandinavians, etc. The lives and environments of a large number of these have, no doubt, been such as is well calculated to breed degenerates. Who would think of comparing for a moment, in the interests of our country, mentally, morally, physically or commercially, a thousand of these foreigners with a thousand of Canadian birth.<sup>101</sup>

This type of discrimination was rampant in Canada. In 1909, the CJMS asserted that Canada had become the “garbage pail of England, Ireland and Scotland”.<sup>102</sup> In an attempt to prevent these invalids from coming to Canada, professional doctors asserted that only specialists could determine the need for more sophisticated medical examination and mental testing. A significant contribution to the anti-immigration agitation was in this ability to specify the mental defectiveness of immigrants. It was a common belief that nations had the right to prevent themselves from being swamped by carriers of hereditary feeble-mindedness.<sup>103</sup> Helen MacMurchy, the nation’s expert on the subject, argued that these degenerates threatened the fabric of Canadian society. She argued that the feeble-minded should be barred from the country, necessitating medical inspections for immigrants.

A common argument at the time suggested that immigrants were flooding the hospitals and asylums. A professor of biology at Queen’s University, A. P. Knight, accused the federal government in 1907 of allowing the entry of an increasing number of mental degenerates and physical weaklings from Europe:

Our asylums, jails, hospitals and other charitable institutions show an increasing percentage of men and women, emigrants from the older lands, who are handicapped by a bad heredity, and quite unfit to make their way in the new world. Their children are equally unfit. They are underfed and undersized; they inherit the unsound minds and diseased bodies of their parents and are doomed to suffering and inferiority from the very beginning of their lives.<sup>104</sup>

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<sup>101</sup> Quoted by Angus McLaren in *Our Own Master Race*, p. 50. From: “Medical Inspection of Public Schools” *Canadian Journal of Medicine and Surgery* 1907 (21), p. 73.

<sup>102</sup> Quoted by Angus McLaren in *Our Own Master Race*, p. 50. From: “Why is the Immigrant Act Not Enforced?” *Canadian Journal of Medicine and Surgery*, 1909 (25), p. 251-53.

<sup>103</sup> Angus McLaren, 1990, p. 51.

<sup>104</sup> Quoted in Angus McLaren, *Our Own Master Race*, p. 51-52. From: “Medical Inspection in the

Medical inspections were a way to keep the degenerates out. Medical expert for the federal government Dr. Peter H. Bryce was the first secretary of the Ontario Board of Health from 1882-1904 and from 1904-1921, chief medical officer of the Department of Immigration. In the latter capacity, his hereditarian views clearly influenced the way in which immigration policy was carried out.<sup>105</sup> He believed that the careful selection of immigrants and the improvement of the environment would bring infinite improvement to the Canadian population. These experts suggested that immigrants posed a double threat: they and their large families not only overloaded Canada with massive social problems but also perversely lowered the fertility of Anglo-Saxons.

It was a common (mis)perception that foreigners were detrimental to the health of the nation. The aliens were, in the words of the American eugenicist Prescott F. Hall, sterilizing their hosts.<sup>106</sup> In 1918, the Canadian National Committee for Mental Hygiene was established by C. K. Clarke and Clarence Hincks to draw attention to the fact that both the native and immigrant populations would have to be tested if their true potential was to be determined. The committee asserted that its surveys proved that there was a direct correlation between immigration and insanity, criminality and unemployment.<sup>107</sup> Finally, in 1928, obligatory overseas medical examinations came in as part of an attempt by the Mackenzie King government to ease the tide of anti-immigration sentiment.

As Angus McLaren articulates, the chief success of the hereditarians of Canada's past did not consist of seriously impeding the entry of immigrants to Canada or of defending Anglo-Saxon dominance; it lay in popularizing biological arguments to

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Schools" *Queens Quarterly*, 1907-08, (15) p. 140.

<sup>105</sup> Angus McLaren, 1990, p. 52.

<sup>106</sup> *Ibid.*, p. 55.

<sup>107</sup> *Ibid.*, p. 59.

perpetuate the argument – so beloved by the anxious – that the nation’s problems were largely the product of the outsider. While overt discrimination based on physical and mental health no longer formally exists in the 2001 Immigration and Refugee Protection Act, the next section of this chapter shows how processes of exclusionary tactics prevail through more implicit discursive techniques.

### **Qualifying Citizenship: Contemporary Canadian Medical Diagnostics**

In our present legislative environment, according to the Immigration and Refugee Protection Act and the corresponding regulations, all prospective permanent residents to Canada and certain temporary residents must undergo a medical examination. The examination is conducted by a Designated Medical Practitioner (DMP), who is a physician selected by CIC to do Immigrant Medical Exams (IME) on behalf of the government. The IME itself comprises the history, physical examination, mental examination and various routine tests depending on age.<sup>108</sup> The IME is done both overseas and on Canadian soil. Individuals already in Canada who wish to become Canadian citizens such as refugee claimants, students or temporary workers, will go through the IME in Canada. There are approximately 1,200 DMPs across the world. The results of the IME are sent to one of CIC’s regional medical offices; there is one in Ottawa and there are nine overseas. A Medical Officer will conduct an Immigration Medical Assessment (IMA), a review of the DMPs examination and essentially make an opinion on admissibility or inadmissibility based on health grounds. Those results are sent to visa officers who make a final decision in terms of admissibility to Canada.

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<sup>108</sup> Interview with Public Official, Health Management Branch, Citizenship and Immigration Canada, September 27th, 2007.

The health-related admissibility criteria refer to: public health, public safety, and excessive demand and finally, whether the person should require medical surveillance.<sup>109</sup> Some residents with certain illnesses must undergo surveillance as a condition of their acceptance. These include inactive TB (those who have active TB are rejected) and treated or positive syphilis.<sup>110</sup> Anybody who has TB is refused entry to Canada. According to CIC Public Officials, the top priority for the medical examination is to protect public health and second, to evaluate excessive demand. A key concept underlying the examination is the goal of keeping out TB. As stated by a CIC official: “The purpose of the IME for me personally, is to prevent entry of TB, number one, into Canada”.<sup>111</sup> Furthermore, not only are immigrants evaluated on pre-existing health conditions, but they are also screened for their potential to become unhealthy. This stigmatizes foreigners as prone to illness and plays on a common fear that foreigners bring diseases to “our” Canadian nation.

Policy-makers define public health in contrast to public safety. As articulated by policy experts at CIC, public safety reflects a concern with danger to an individual, such as someone coming to Canada with paranoid schizophrenia, with the intent to injure a Canadian; public health reflects a concern with conditions that are transmissible such as the outbreak of infectious disease.<sup>112</sup> In this respect, the category of health as a condition

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<sup>109</sup>S. 38 of the Act reads:

38(1) A foreign national is inadmissible on health grounds if their health condition:  
 (a) is likely to be a danger to public health  
 (b) is likely to be a danger to public safety; or  
 (c) might reasonably be expected to cause excessive demand on health or social services.

<sup>110</sup> Overseas Processing Policy Manual 15. (Policy 10)

<sup>111</sup> Interview with Public Official, Health Management Branch, Citizenship and Immigration Canada, September 26th, 2007.

<sup>112</sup> Interview with Public Official, Health Management Branch, Citizenship and Immigration Canada, September 27th, 2007.

of citizenship reflects economic and security elements, which feature prominently throughout the entire citizenship and immigration program. The Regulations define excessive demand as:

- (a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or
- (b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of the denial or delay in the provision of those services to Canadian citizens or permanent residents.<sup>113</sup>

The requirement that each newcomer, including students and permanent residents, must undergo a process of medical scrutiny upon entry to Canada, demonstrates several components of the neoliberal immigration program. This program demonstrates fear of immigrants as outsiders and potential health risks to Canadians. In light of the mandate to assess potential risk, a medical officer will abide by the following Regulations:

- 31. Before concluding whether a foreign national's health condition is likely to be a danger to public health, an officer who is assessing the foreign national's health condition shall consider
  - (a) any report made by a health practitioner or medical laboratory with respect to the foreign national;
  - (b) the communicability of any disease that the foreign national is affected by or carries; and
  - (c) the impact that the disease could have on other persons living in Canada.<sup>114</sup>
- 33. Before concluding whether a foreign national's health condition is likely to be a danger to public safety, an officer who is assessing the foreign national's health condition shall consider
  - (a) any reports made by a health practitioner or medical laboratory with respect to the foreign national; and
  - (b) the risk of a sudden incapacity or of unpredictable or violent behaviour of the foreign national that would create a danger to the health or safety of persons living in Canada.<sup>115</sup>

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<sup>113</sup> Immigration and Refugee Protection Regulations S. 1 Definitions  
<http://laws.justice.gc.ca/en/showtdm/cr/SOR-2002-227/?showtoc=&instrumentnumber=SOR-2002-227>  
 Accessed February 15, 2008.

<sup>114</sup> *Immigration and Refugee Protection Regulations* S. 31.  
[http://laws.justice.gc.ca/en/showdoc/cr/SOR-2002-227/bo-ga:l\\_8-gb:l\\_3/en#anchorbo-ga:l\\_8-gb:l\\_3](http://laws.justice.gc.ca/en/showdoc/cr/SOR-2002-227/bo-ga:l_8-gb:l_3/en#anchorbo-ga:l_8-gb:l_3) Accessed February, 13, 2008.

<sup>115</sup> *Immigration and Refugee Protection Regulations* S. 33.  
[http://laws.justice.gc.ca/en/showdoc/cr/SOR-2002-227/bo-ga:l\\_8-gb:l\\_3/en#anchorbo-ga:l\\_8-gb:l\\_3](http://laws.justice.gc.ca/en/showdoc/cr/SOR-2002-227/bo-ga:l_8-gb:l_3/en#anchorbo-ga:l_8-gb:l_3) Accessed February 13, 2008.

A main public health-related security concern identified by public officials refers to any migrant with significant psychiatric concerns.<sup>116</sup> Should border officials think someone has arrived with the *potential* to have a psychotic episode, they can re-request a medical examination. Even though someone may have papers to enter Canada, if they show up at a border and demonstrate signs of infectious disease, officials can stop individuals from entering Canada and enforce quarantine. CIC's Health Management Branch will provide advice to officials on what to do with and where to send individuals.<sup>117</sup> Evidently, health and sovereignty are powerful narratives are enmeshed at the Canadian border.

CIC discourse demonstrates the connection between neoliberal market principles and proper health. In particular, section 38(c) of IRPA projects a concern that immigrants who are unhealthy would cause an economic burden to Canadians. Evidently, there is no place for ill immigrants who need long-term care in Canada. There is an implicit assumption that they are less likely to be productive and contribute *to* the Canadian economy. In order to make sure that immigrants would not place a burden on the Canadian welfare system, they must go through a rigorous process of medical scrutiny. In addition to protecting public safety and public health, the Health Management Branch at CIC must ensure that policy objectives fit within the economic goals of the government. For example, the Minister of Citizenship and Immigration frequently refers to the policy objective of welcoming more workers into the country.<sup>118</sup> In effect, policy drafters must also bear this goal in mind when creating policy guidelines.

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<sup>116</sup> Interview with Public Official, Health Management Branch, Citizenship and Immigration Canada, September 26th, 2007.

<sup>117</sup> Interview with Public Official, Health Management Branch, Citizenship and Immigration Canada, September 26th, 2007.

<sup>118</sup> Interview with Public Official, Health Management Branch, Citizenship and Immigration Canada, September 27<sup>th</sup>, 2007.

Furthermore, it is important to note that the IME is not a medical intake procedure. As described by one frontline social worker: “The IME is nothing more than a mechanism to screen people out. There is no medical treatment or follow-up from the IME”.<sup>119</sup> As we can link the origins of IMEs to historical practices of quarantine, medical examinations for potential citizens are based on an exclusionary model. Brian Gushulak, researcher and former citizenship and immigration public official, states that the current Canadian and international legislative framework is specifically designed to exclude people.<sup>120</sup> Traditional medical approaches to dealing with the health of migrants remain intact today. Historically, migrant health has been based on the principles of protecting the recipient population through the policies of exclusion directed at the migrant or arriving traveler.

As Gushulak argues, similar exclusionary processes continue in a modern context through immigration medical screening and border control practices intended to reduce threats to public health or to mitigate potential impacts on healthcare services.<sup>121</sup> Medical examinations in Canada are primarily focused on the prevention of TB, a communicable disease, which demonstrates the medical relationship between concerned host population and migrant. According to both the frontline worker and Dr. Gushulak, the IMEs instead

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<sup>119</sup> Interview with a frontline social worker from the British Columbia Multicultural Services Society. February 20<sup>th</sup>, 2008. Vancouver B.C.

<sup>120</sup> Interview with Brian Gushulak, Consultant, former Director of Migration Health Services of the International Organization for Migration in Geneva and former Director General of the Medical Services Branch of Citizenship and Immigration Canada. Currently Mr. Gushulak is assigned to Citizenship and Immigration dealing with control frameworks for the Canadian immigration medical examination process. His research interests include migration health and population mobility, international disease control and the history of quarantine practices. Dr. Gushulak has published several articles on the science and practice of migration health. He has recently co-authored a textbook dealing with health and migration. He is the past Chair of both the International Centre for Migration and the Refugee and Migration Health Committee of the International Society for Travel Medicine. Phone interview, March 21<sup>st</sup>, 2008.

<sup>121</sup> Brian Gushulak et al. “The Basic Principles of Migration Health: Population Mobility and gaps in disease prevalence.” Emerging Themes in Epidemiology. May 2006. p. 1.

should be used for *inclusive* practices, as intake examinations linked to primary follow-up care with physicians upon arrival of newcomers to the host nation. In addition, they argue that DMPs could use the IMEs to provide information about health care in Canada, facilitate follow-up treatment and adhere to strategic, productive health management strategies more broadly. In an interview with Dr. Gushulak, he articulated the importance of asking how we can expand the focus of IMEs from an exclusionary lens to a broader context that would allow the process to be used not only for the required legal screening issues to determine who cannot come, but begin to benefit the arriving people; and, if possible, be used as a tool to help with the individual and population health on arrival.<sup>122</sup> To carry this out, a form of pre-departure screening would make health integration upon arrival for newcomers much smoother.

In this population-health paradigm, epidemiologically-based longitudinal studies could potentially track migrant records in centralized databases so that health providers would have more detailed and comprehensive information to assist their follow-up and continuous migrant care. Gushulak argues: “A population health-based approach considers the relationship between migration and health as progressive, interactive process influenced by temporal and local variables”.<sup>123</sup> This approach would consider the unique health experience or context that migrants face, based on their place of origin and departure. It considers the spectrum of people’s health experiences to factor in ‘place’, which includes disease risks what kind of care has been available in the place of departure and ‘time’, specifically regarding when the individual left and what the conditions were like over a period of time. This population health-based approach differs

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<sup>122</sup> Phone interview with Brian Gushulak, March 21<sup>st</sup>, 2008.

<sup>123</sup> Gushulak et al. “The Basic Principles of Migration Health: Population Mobility and gaps in disease prevalence.” p. 2.

from the traditional exclusionary, threat or risk based model of immigrant medical examination. However, despite the shift from exclusive to inclusive medical examinations, the state-centric assumptions about qualified life and stigmas associated with health remain; to be a citizen requires good health in compliance with the productive goals of the state.

Should someone be ill, or should their condition place a burden on society, our state assumes that they would not be able to contribute to Canadian society. The excessive demand category leaves open the space for rejection based on disability – deafness, blindness, mental illness, etc. – these forms of disability would indeed place a “demand on health and social services” and could legally be rejected. In light of the rejection of someone’s residency claim based on a chronic condition, the state governs someone’s life and determines its value. Consequently, the state dichotomizes life and formulates people into categories of healthy or unhealthy, accepted or rejected, valuable or worthless, insider or outsider. Given this process of inclusion and exclusion, the state makes a judgment over the value of life itself.

Health discourse and affiliated medically diagnosed labels operate as powerful state technologies to regulate biological existence. The policy objectives mentioned in this second chapter demonstrate a connection between market principles and health, which produce inequalities despite claims to a more liberal, open and less discriminatory legislative framework. In particular, section 38(c) of the Immigration and Refugee Protection Act projects a concern that immigrants who are unhealthy would cause an economic burden to Canadians. Evidently, there is no place for ill immigrants who need long-term care in Canada. There is an assumption that they are less likely to be

productive and contribute to the Canadian economy. This conceptualization of health, which forms the basis for medical diagnostics, can also be understood as an avenue for social power and control.

It is important to consider the social implications of biomedical diagnostic capabilities. As Nelkin and Tancredi articulate in *Dangerous Diagnostics*, assessments naturally have a futuristic quality, based on established institutional values.<sup>124</sup>

Assessments are made, which categorize people in a commodified way. People, they argue, are not differentiated from machines. They are objects, reduced to examinable parts.<sup>125</sup> Human behaviour becomes explained through simplified, structured biological terms. Subjects with the potential to become ill are easily categorized and regulated in this medical regime. These tests, which define citizens as ‘normal’ (potentially acceptable) or ‘abnormal’ (unhealthy and potential risks), reinforce the social hierarchies embedded within our system with respect to degrees or classifications of health.

Health discourse and policy in this context is both repressive and productive. The discourse represses the unhealthy identity when excluding unhealthy immigrants from the Canadian community. Simultaneously, the health discourse is productive insofar as it produces a type of epidemiological knowledge and imposes this form of knowledge on foreign nationals. Consequently, health discourse and epidemiological knowledge shape and transforms how citizens are perceived. Subjects (immigrants) become interpellated or upheld by these health categories.<sup>126</sup> Health discourse becomes a power tool of social control. Essentially, the fundamental producers of population health-based knowledge

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<sup>124</sup> Dorothy Nelkin and Lawrence Tancredi. Dangerous Diagnostics: The Social Power of Biological Information. New York: Basic Books, 1989. p. ix.

<sup>125</sup> Nelkin and Tancredi. p. 3.

<sup>126</sup> Jennifer Poudrier. In Surveillance as Social Sorting. Chapter 6. Edited by David Lyon. 2003, p. 118.

and information are the classifications of epidemiological science. However, health knowledge and the categories it produces are certainly not neutral or objective.<sup>127</sup> This has significance for our understanding of citizenship.

In our modern era, to be political necessitates citizenship and to be a citizen necessitates good health. In effect, to be worthy of citizenship, applicants must be healthy and productive members of society in the present and in the future. To this effect, medical examiners consider future health when evaluating potential risk. As a result, the citizen exists in a political condition where the potential risk of illness remains at the empirical and virtual border of the citizen's identity in Canada. This concept of potentiality recurs throughout the entire health and migration management program. The concern over potential harm, risk or threat, necessitates a governmental obsession with risk management strategies. The third chapter of this thesis will evaluate contemporary security technologies, which operate upon the principles of risk management. These technologies can be understood through the political processes Michel Foucault and Nicholas Rose refer to in their discussion of governmentality, biopolitics and biopower, which will be discussed in subsequent chapters of this thesis.

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<sup>127</sup>Poudrier, 2003, p. 118

### Chapter 3 – Security as Rupture?

While border and population control technologies demonstrate new qualities, sovereign discourse is not dead in Canada. Our Prime Minister reminds us:

Canada was founded on the principles of peace, order and good government. This is the birthright of all Canadians; yet Canadians feel less safe today and rightly worry about the security of their neighbourhoods and the country. There is no greater responsibility for a government than to protect this right to safety and security.<sup>128</sup>

According to our leader, we feel insecure and unsafe in our country, as we feel “less safe today” than in the past. Our elites argue that we face an unstable environment that differs from our founding context of peace order and good government. As a result of “our own anxieties”, the government has a self-declared responsibility to protect our safety and secure the nation. Since this new era exists as a departure from our humanitarian origins, our leaders offer the self-justification to protect sovereignty and secure our borders. As a result, border and immigration policies are caught up in this unsettling, fearsome discourse. While our leaders suggest that we are “less safe today” and live in an environment which necessitates protection, this chapter will continue the argument presented in the last chapter, wherein certain assumptions about foreigners and outsiders which “necessitate” this fear and insecurity, existed historically and remain today.

With the introduction of the 2001 Immigration and Refugee Protection Act (IRPA), the discussion of migration became couched within not only the language of market practices but also the discourse of security. The Act places a heavy emphasis on security issues including deportation, crime and securing the Canadian population. The IRPA was introduced into the House of Commons in February 21st 2001, prior to the

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<sup>128</sup> Stephen Harper. October 16 2007. *Speech from the Throne* <http://www.sft-ddt.gc.ca/eng/media.asp?id=1371> Accessed February 17, 2008.

events of September 11<sup>th</sup> that year. Between February 21<sup>st</sup> and when IRPA became law on June 28<sup>th</sup> 2002, three different ministers with different ideas and opinions oversaw the citizenship and immigration portfolio.<sup>129</sup> The events of September 11<sup>th</sup> gave new life to domestic and American concerns about Canada's immigration and refugee determination systems. Facing hyperbolic criticisms that Canada is a haven for terrorists because of its allegedly porous borders and its lax immigration and refugee determination systems, the Canadian government responded in December 2001 with sweeping new legislation targeting the terrorist threat within as well as outside the state.<sup>130</sup> Bill C-36, the Anti-Terrorism Act (ATA), dramatically expanded the powers of law enforcement and national security agents to target, monitor, arrest and detain Canadian citizens without warrant on the basis of suspicions relating to terrorist activity. The IRPA and the ATA were promoted as Canada's hard-hitting, two-pronged contribution to the post-September 11<sup>th</sup> War against Terrorism.

Not everyone is welcome to Canada under IRPA. Despite being an act about "protection", IRPA emphasizes keeping the unworthy out of Canada. While 'protection' appears in the title of this act, the focus of IRPA is not to protect refugees. The Act expanded inadmissibility and exclusion provisions as well as the powers of detention. Critics have argued that it stereotypes new immigrants as fraudulent.<sup>131</sup> While the IRPA does include more prominent references to Canada's human rights obligations than the former legislation, it also expands the categories of people who are to be denied these protections. As Anna Pratt argues: "what guides this legislation is the protection of the

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<sup>129</sup> Knowles, 2007, p. 257.

<sup>130</sup> Anna Pratt. Detention and Deportation in Canada. UBC Press: Vancouver, 2005. p. 3.

<sup>131</sup> Pratt, 2005, p. 4.

Canadian public, nation, borders and integrity of Canada's administrative systems".<sup>132</sup> In this Act, Canadians appear as the ones who need to be protected from the threats posed by foreign nationals – the “manifestly alienating term” – used in the legislation to refer to prospective immigrants and refugees who are not citizens in Canada.<sup>133</sup> While this legislation pledges to offer protection to refugees, it appears that the inclusive, humanitarian aims will be addressed only by more extensive enforcement provisions to detect, detain and deport the fraudulent abusers of the system. Once those system abusers have been dealt with, those who truly are in need of protection will be found within the residual space available for humanitarian protections.

As presented in the previous chapter, IRPA begins with an explanation of its economic, social and cultural goals. These include enriching the fabric of Canadian society and respecting the country's federal, bilingual and multicultural character. However, after a close review of the legislation and corresponding discourse, it becomes apparent that the focus is more precisely on bringing those of good kind to the country than on the stated social and cultural goals. This chapter evaluates how changes to immigration and border policies over the last decade appear in an era of “securitization”, where the proliferation of border technologies, the expansion of networks and alliances and the discourse of security expands to other realms (for example beyond the military or territorial defence) and adds meaning to citizenship and immigration policy. Subsequent to this chapter, I will review how securitization operates on the one hand as a rupture to the discourse of Canadian humanitarianism; yet, on the other hand, operates to facilitate this very myth.

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<sup>132</sup> Pratt, 2005, p. 5.

<sup>133</sup> Ibid., p. 5.

Ethnic biases remain pervasive today in our contemporary fearful and anxious climate. Consequently, according to our political elite, this climate necessitates the tighter securing of our borders in conjunction with careful management and monitoring of foreign identities and populations. State power operates to enact tougher border control through the adoption of stricter selection criteria for those deemed undesirable and potentially threatening.<sup>134</sup> This tougher control appears in the Act in a context that facilitates a process of securitization. This securitization operates to facilitate and legitimate identity control and management. As a result of the securitization of borders and immigration policy and practice, the state further facilitates the distinction between insiders, citizens and outsiders or foreign nationals.

Since September 11<sup>th</sup> 2001, alterations to citizenship and immigration policy have been implemented within an environment where security concerns, border management and anti-terrorism measures have policy salience. Canadians have witnessed a series of new immigration and border management technologies aimed at protecting Canadians and keeping threatening foreigners out. On December 12<sup>th</sup> 2003, the Canadian Border Services Agency (CBSA) came into being. The CBSA took over intelligence capabilities and information-sharing responsibilities at the border from CIC.<sup>135</sup> During this same time, both IRPA and the ATA were being implemented. In conjunction with these two Acts, identity-cards for permanent residents were fast-tracked, consistent with the government's fight against terrorism.<sup>136</sup> Similar to a Canadian passport, the Permanent Resident Card (PRC) is official proof of resident status for permanent residents in

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<sup>134</sup> Abu-Laban and Gabriel, 2002, p. 167.

<sup>135</sup> Knowles, 2007, p. 263.

<sup>136</sup> Abu-Laban and Gabriel, 2002, p. 77.

Canada. If a permanent resident wishes to leave the country, he or she must show the PRC for re-entry.<sup>137</sup> This card operates as a mechanism to control the population in Canada. As Simone Brown argues, the PRC turns people into identifiable bodies, as differentiated state subjects and data.<sup>138</sup> Bodies can be more easily monitored, classified and controlled with these high-tech cards. These identification (ID) cards are no longer simple paper-based documents but sophisticated high-tech devices using a mix of traditional and advanced identification features (biometrics), including data encrypted in an optical stripe. By virtue of being machine-readable, authorities can connect more easily with remote databases and authentication mechanisms.<sup>139</sup> Not only does the PRC identify permanent residents in differentiation to citizens, but it also raises many privacy and legitimacy questions regarding who can access the data collected. This form of identity management and data collection can be understood by what David Lyon terms biosurveillance.<sup>140</sup> As the PRC is an identity-document, it facilitates the ease of state management and control of its non-citizens, operating as a form of demarcation. The PRC operates as a bodily control mechanism to distinguish between classes of residents in Canada.

This document serves as a key technology to regulate the Canadian population. It serves as a mechanism to separate the identity of a citizen inside the polis with a foreigner outside. As Simone Brown suggests, this document operates to shape political identity and subjectivity in Canada. These identity documents imprint state technologies

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<sup>137</sup> CIC. *Permanent Resident Cards*. <http://www.cic.gc.ca/EnGLIsh/information/pr-card/index.asp> Accessed February 21, 2008.

<sup>138</sup> Simone Browne, "Getting Carded: Border Control and the Politics of Canada's Permanent Resident Card." *Citizenship Studies*. September 2005. Vol 9(4). p. 423.

<sup>139</sup> David Lyon. *Surveillance as Social Sorting*. London: Routledge, 2003. p. 77.

<sup>140</sup> This term is associated with David Lyon's description of biological surveillance in Canada.

on bodies as it shapes understanding and belonging to the sovereign state.<sup>141</sup> Furthermore, the use of identity-cards as a type of control measure dispels and perpetuates stereotypes about immigrants, such as the notion that immigrants are likely to be fraudulent. It also perpetuates the myth that newcomers are threatening to citizens and must be monitored, regulated and controlled.

In the quest to secure borders, there is an insatiable desire to improve information production and sharing technologies. The improvement of existing information technologies, the development of new and better information networks and the forging and nurturing of diverse partnerships are critical to the pursuit of smart borders. According to Canada's Department of Foreign Affairs and International Trade, "smart borders" entails maintaining a secure flow of people. In order to secure the flow of people, the government will enhance border technologies through the use of biometrics, fingerprinting, permanent resident cards and enhanced data gathering mechanisms at the border.<sup>142</sup> Risk management technologies are crucial for border security. Our risk management technologies "make the border smart".<sup>143</sup> In particular, identity documents are a key technology for making up citizens and governing populations. These documents work to reconstitute state control over bounded territories and enhance their embrace of populations.<sup>144</sup> The use of passports is a clear example of this technology. Passports require citizens to be called upon by the state to identify their true self. Anna Pratt quotes

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<sup>141</sup> Browne, 2005, p. 424.

<sup>142</sup> The Canada-US Smart Border Declaration. Action Plan for Creating a Secure and Smart Border. <http://www.dfait-maeci.gc.ca/anti-terrorism/actionplan-en.asp> Accessed February 17, 2008.

<sup>143</sup> Pratt, 2005, p. 186.

<sup>144</sup> *Ibid.*, p. 206.

John Torpey to argue passports presume their bearer's guilt.<sup>145</sup> The use of such documents by the state indicates their fundamental suspicion that people will lie about who or what they are.

Documents, including the PRC and passports, are crucial mechanisms for the state to distinguish between citizens and non-citizens. As John Torpey demonstrates in *The Invention of the Passport*, passports are used by the state as another medium to identify and track the movement of foreigners. The passport operates as an attempt to institutionalize the idea of a homogenous ethnocultural nation-state. Torpey argues that boundaries between persons rooted in the legal category of nationality are indicated by documents in order to make boundaries knowable and enforceable.<sup>146</sup> His analysis shows us how individuals are dependent on states for a political identity. He argues that national communities are not just imagined but also identified and codified through documents.<sup>147</sup> In order for states to achieve their economically efficient objectives, systems of registration such as census data, medical examinations, the PRC and passports assist states to store knowledge about its subject population. These modern documents, the PRC and passport, operate as “mobile versions of files” for state management and control of the population.<sup>148</sup> Such documentation controls are bound to what eventually turn into the rights and duties that come with being a citizen. The state has the authority to determine who is (in)eligible for the rights and responsibilities that come with citizenship and as a consequence, the state has the power to limit political voice and agency to *qualified* individuals. Technologies such as passports, PRCs and biometrics serve to help the state

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<sup>145</sup> Pratt, 2005, p. 206.

<sup>146</sup> John Torpey. *The Invention of the Passport*. Cambridge: Cambridge University Press, 2000. p. 2.

<sup>147</sup> Torpey, 2000, p. 6.

<sup>148</sup> *Ibid.*, p. 12.

know and monitor the population in pursuit of cultivating a certain kind of citizen as acceptable in Canada.

Documents such as the PRC and passports are useful for states to construct and sustain identities for administrative purposes. Documents and identification cards comprise verification of our identities and offer states the potential to maintain a stable knowledge of a mobile population. Ultimately, Torpey argues, passports and identity documents reveal what is actually a “massive illiberality”.<sup>149</sup> This massive illiberality operates through the state’s presumption of an individual’s guilt when called upon to identify oneself. In this respect, state suspicion of people to declare their real identity leads to its monopoly over the legitimate means of movement between borders. As a result, as Torpey suggests, individuals become “prisoners of their identities”.<sup>150</sup> Faced with possibly unstable and fraudulent identities, states impose tangible identities upon its population to achieve economic and political aims. Recently, these population management technologies have been established at the border, beginning with a field-trial of biometrics on newcomers to Canada.

As of October 19, 2006, biometric field trial technology came into force for those wishing to reside in Canada. These technologies involve the use of fingerprinting and facial recognition for newcomers to Canada, including students and permanent residents in designated areas.<sup>151</sup> Biometric technologies take physical or behavioural characteristics of a person and convert them into digital data. Data is encrypted and stored and can then be used to identify the person. Biometric identifiers include fingerprints, hand geometry,

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<sup>149</sup> Torpey, 2000, p.166.

<sup>150</sup> Ibid., p. 166.

<sup>151</sup> CIC. “Citizenship and Immigration Canada Begins Biometrics Field Trial” Notice. October 19 2006. <http://www.cic.gc.ca/english/press/notice/notice-trial.html>

iris scan and facial and voice recognition. The use of biometric technology is increasingly being considered in Canada to increase the accuracy and efficiency of identification at border crossings.

Implementing this border technology reflects a medium for the state to manage the identity of its population and distinguish between its citizens and foreign nationals. The implementation of surveillance here reflects the governmental modality of risk management, premised on the belief that foreign nationals can be *potentially* threatening.<sup>152</sup> These security measures exemplify the connection between immigration and security in the contemporary political climate, which results in the depiction of foreign nationals as warranting concern. Spatially, immigrants and newcomers exist perpetually outside of citizens. Consequently, they remain constructed by the state as perpetual risks, which must be managed and monitored. As a result, the state's development of surveillance technologies strengthens its power by enhancing its knowledge of the population.

### **On Risk**

Border technologies demonstrate an effort to tame uncertainty and to know the unknowable. Technologies of border control and immigration screening include “hard” technologies (detention, exportation) and “soft” technologies such as medical examinations and biometrics. Each kind of technology operates as a pervasive method of social control and population management. Risk technologies – attempts to know the unknowable and to prevent future harm – are forward looking. As Anna Pratt articulates:

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<sup>152</sup> Mark Salter and Elia Zuriek. Global Surveillance and Policing: Borders, Security, Identity. Portland: Willan Publishing, 2005. p. 3.

“the centre of risk consciousness lies not in the present but in the future”.<sup>153</sup> In effect, citizens must become active today in order to prevent, alleviate or take precautions against the crises and problems of tomorrow and beyond.

Technologies of risk management refer to how to manage well in the face of uncertainty. These technologies aim to act preemptively in order to prevent problematic occurrences and to structure policies and technologies in order to reduce the likelihood of undesirable events or conduct. Risk is closely linked with morality. Morality in this regard, refers to the power of dividing practices wherein the language of risk is effective in providing a “vener of objectivity” to moral judgments and opinions.<sup>154</sup> This guise of neutrality is a concern. Risk management strategies tend to be affiliated with scientific, expert and objective probability calculations and predictions. In the context of border control, risk knowledge and technologies display powerful, moralized associations about the meaning of “risk” and “threat” to the Canadian population.

Many technologies of border control and immigration penalty are borrowed from the field of criminal justice. These include the coercive use of body restraints such as handcuffs and shackles, detention and deportation, but also a variety of surveillance technologies, fingerprinting, photographing and profiling.<sup>155</sup> Whether in the form of detention, deportation, body restraints, search or arrest, border control technologies manifest bodily coercions of sovereign power, connected to territorial defence. As a further vestige of sovereign coercion, the Minister of Citizenship and Immigration has the legitimate authority to suspend the rule in a state of exception. He or she can allow entry

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<sup>153</sup>Pratt, 2005, p. 18.

<sup>154</sup>Ibid., p. 210.

<sup>155</sup>Ibid., p. 207.

in cases where the rules dictate refusal of entry or allow someone to stay where the rules dictate removal, as well as order removals upon the minister's discretion.<sup>156</sup> This exceptionality functions as further evidence of the persistence of sovereign power in this domain. Evidently, sovereign power had not eroded from our contemporary border policies. Despite the use of "soft" technologies – biometrics, immigrant medical examinations and permanent resident cards – sovereign power is being refashioned and takes on a new governmental form.

Different modes of power and a diverse array of governing technologies are at play. While many of these technologies evidence the continuing presence of sovereign power through coercive, violent and bodily punishments and the ways in which the rule and the punishment can be suspended, risk management strategies, the use of passports, statistics and medical examinations demonstrate new modes of governmental power. Border policies are neither exclusively sovereign nor governmental. Immigration technologies control the border and at the same time, the border continually constitutes and produces immigration technologies, which organize, separate and classify human beings in terms of value and worth. This production of borders and policies is crucial for maintaining security. In order for these practices to facilitate population management, flexible decision-making policies are essential.

### **On Discretion**

One mechanism for this exceptional right to function is through the use of discretion. Discretionary powers are essential to the efficient and effective administration

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<sup>156</sup> Immigration and Refugee Protection Act S.21, S. 24, 25, 34, 74.

of large numbers of people in complex and varying ways. Discretionary decision-making, political and bureaucratic, is today and has always been, a central feature of the administration of Canadian immigration and refugee policies.<sup>157</sup> Discretion remains in the hands of individual visa officers and medical examiners administering immigrant applications. IRPA is full of discretionary decision-making. Abu-Laban and Gabriel call the Act framework legislation as it outlines the vision of the legislation without detailing the specific logistics for inclusion and exclusion, admission and rejection.<sup>158</sup> The framework approach of the legislation leaves most of the details to extensive regulations that can be changed without the involvement of Parliament.

Discretion appears in a variety of sites. For example, section 39 of the Act states that a foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them and have not satisfied an officer that adequate arrangements for care and support, other than social assistance, are made.<sup>159</sup> Another example of discretion rests with medical practitioners conducting health screening for immigrants. These policy adjudicators have much discretion in determining how individual cases match up with the objectives set out in the Act and Regulations.

While discretion appears in frontline decision-making, it also appears at the bureaucratic, administrative level. As Anna Pratt argues, the sovereign decision to withhold punishment is delegated to frontline immigration officers. This power is written

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<sup>157</sup> Pratt, 2005, p. 58.

<sup>158</sup> Abu-Laban and Gabriel, 2002, p. 76.

<sup>159</sup> *Immigration and Refugee Protection Act* 2001. <http://laws.justice.gc.ca> S. 39 Accessed February 25, 2008.

into the laws and policies they administer.<sup>160</sup> In the context of screening potential immigrants, discretionary decision-making is consistent with the form of sovereign power employed against undesirable and undeserving noncitizens at the border. In premodern times, sovereign power operated to ‘decide on the exception’ vis-à-vis power to enact or withhold bodily punishment. This will be further discussed in chapter four.

Today, the Minister of Citizenship and Immigration, as well as delegated officials are present not only as the power exacting the vengeance of the law, but as the power that could suspend both law and vengeance. One example of this form of exceptionality occurs in the form of the issuance of security certificates. Both the Minister for Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness have the right to manage the issuance of security certificates. The Minister of Public Safety and Emergency Preparedness may issue a certificate to deport a non-citizen (visitor, refugee, permanent resident, etc.) in Canada as a threat to national security. According to the Act, the Minister of Public Safety and Emergency Preparedness may sign a certificate stating that a permanent resident or a foreign national is inadmissible on grounds of security, violating human or international rights, or serious criminal activity.<sup>161</sup> Both ministers can warrant detention and arrest for someone named on a security certificate.<sup>162</sup> This also applies to the minister’s capacity to issue the release of a detained individual. According to the CBSA, the issuance of security certificates operates within the Government of Canada’s “broad-based approach to addressing threats” and the certificate process is “one of the many tools at the government’s disposal

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<sup>160</sup> Pratt, 2005, p. 183.

<sup>161</sup> *Immigration and Refugee Protection Act* 2001. <http://laws.justice.gc.ca> S. 77.

<sup>162</sup> *Immigration and Refugee Protection Act*. 2001, <http://laws.justice.gc.ca> S. 82.

to ensure the safety and security of Canada and the Canadian public”.<sup>163</sup> By having legislation in place with a flexible and open framework, sovereign authority operates through the ability of the minister to make discretionary decisions.

Arguably, the sovereign, or individual acting in place of the sovereign, remains a supreme authority over a population. The capability for the minister to invoke exceptions to legislation and make decisive actions about who is and is not allowed into the country demonstrates residual elements of sovereign control over a population. Ministerial discretion today is an instrument for potentially state-sanctioned racism in immigration exclusions.<sup>164</sup> Use of this discretion is a powerful and dangerous tool, reminiscent of historic exclusions. Anna Pratt quotes Foucault to capture the essence of premodern sovereign power. She articulates that historically, the sovereign alone could wash away offences committed, although he delegated the task of exercising his power to dispense justice to the courts. The sovereign would not transfer authority, but rather retained it in its entirety though the capability suspend a sentence or increase it at will.<sup>165</sup> The sweeping largely ‘unchecked’ scope for ministerial discretion functions as a remaining vestige of sovereign power.

The context of exceptionality and discretionary power should not be taken lightly. As Anna Pratt argues: “discretion can be regarded as a productive activity rather than a residual and latent ‘space’”.<sup>166</sup> The exercise of discretionary power under a liberal regime is a central technology in the normative project that constitutes national borders, national

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<sup>163</sup> CBSA. “Security Certificates Under the Immigration and Refugee Protection Act”. <http://www.cbsa-asfc.gc.ca/newsroom/factsheets/2005/certificat-e.html> Accessed December 10, 2006.

<sup>164</sup> Pratt, 2005, p. 148.

<sup>165</sup> Michel Foucault. *Discipline and Punish*. New York: Vintage Books, 2nd Ed., 1995. p. 53.

<sup>166</sup> Pratt, 2005, p. 139.

identities and historically specific versions of citizenship and citizens. This exercise is shaped and inflected by the operation of dominant discourses, such as the construction of “public danger” as a real threat.<sup>167</sup> The productive capacity of discretion is not something that should escape critical political analysis.

One view of discretion is that it operates as an essentially inclusive, humanitarian and benevolent quality, which enables charity. In legal scholarship, administrative law is the field that addresses the use of discretion as bureaucracies attempt to make public policy decisions. Administrative law is one of the basic areas of public law that deals with the relationship between government and citizens.<sup>168</sup> Discretion enables decision-makers to have flexibility in terms of adjudicating cases. As administrative legal theorist Lorne Sossin articulates, bureaucratic decision-makers make practical judgments based on everyday knowledge of citizens and shared values of what is good and right in order for it to be accepted as meaningful by the citizenry.<sup>169</sup> The administrative function of government is supposed to fit with the rational, neutral, scientific model of liberalism. As Woodrow Wilson stated:

The field of administration is a field of business. It is removed from the hurry and strife of politics; it at most points stands apart even from the debatable ground of constitutional study. It is part of the life of society only as machinery is part of the manufactured product.<sup>170</sup>

Wilson’s perspective confirms the idea that policy-makers are separate from the fray of politics and will make well-calculated, rational decisions based on common will.

Discretion is awkwardly, yet strategically placed within liberal rationalism. Discretion

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<sup>167</sup> Pratt, 2005, p. 139.

<sup>168</sup> The Canadian Encyclopedia. Administrative Law. <http://lois.justice.gc.ca/en/showdoc/cs/I-2.5/bo-ga:l 1-gb:l 3/en#anchorbo-ga:l 1-gb:l 3> Accessed February 21, 2008.

<sup>169</sup> Sossin, Lorne. “The Politics of Discretion: Towards a Critical Theory of Public Administration”. Canadian Public Administration. Vol. 36(3) September 1993. p. 375.

<sup>170</sup> Wilson, Woodrow. “The Study of Public Administration.” p. 209-210. Quoted by Sossin, 1993, p. 376.

can be represented as a way to negotiate between the universality of law and individualized equity; however, as Anna Pratt suggests, in our modern security climate, its “inherent benevolence has been corrupted and discretionary processes have been hijacked in the name of getting tough”.<sup>171</sup> The exercise of discretion is congruently an exercise of human judgment. While discretion acts as a shield from legal and political scrutiny, historical examples reveal that discretion cannot be said to have any essential quality. The very idea that there is an original “real” meaning of discretion, which is benevolent and compassionate, ignores its contrary effects. Historically, the sovereign in feudal times could use discretion as a quality of mercy, but this quality was not linked with humanitarian ideals or notions of equity.<sup>172</sup> The ability to suspend the rule and the capacity to withhold punishment have historically and in some respects remain today, to display and maintenance of the power of the sovereign.

During the postwar period in Canada, humanitarian and legal discourses provided a discursive dominance. As discussed in the first chapter of this thesis, these discourses provided the rationale for significant changes to immigration and refugee law and policy in the 1960s and 1970s. However, even in the context of those somewhat “humanitarian” decades, humanitarian and legal discourses did not displace or supplant exclusionary ones. Throughout history and still today, it appears that discretion is a central technology of both the projects of liberal humanitarianism and exceptionality. To regard discretion as essentially inclusive, humanitarian and compassionate, denies the mutually constitutive relations of inclusions and exclusions, of discretion and law.<sup>173</sup> Thinking of discretion as

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<sup>171</sup> Pratt, 2005, p. 146.

<sup>172</sup> *Ibid.*, p. 146.

<sup>173</sup> *Ibid.*, p. 146.

a purely humanitarian technology obscures the view of discretion as a technique that can be used to achieve diverse governmental objectives to produce a variety of effects.

Discretionary decision-making requires further analysis as we consider the management of identities in Canada. Mark Salter discusses the sovereign right of the state to exclude the dangerous and admit the safe. This discretionary function, in order to fully operate in the state, relies on individual acts of discretion as each state agent stands in for the sovereign.<sup>174</sup> This coincides with the sovereign's role in creating the exception to law; the sovereign (state) essentially decides who is 'in' and who is 'out' of the Canadian community. Salter's analysis discusses how individuals carry out this function for the sovereign. Evidently, the discretionary power of each visa officer, or each medical examiner, uses the sovereign right to make a decision over the value of a potential citizen's life.

Consistent with the operation of governmentality, discretionary power is not exclusively owned or wielded by the formal state institutions. We can think of discretion not as the absence of governance, rather, the powerful form of governance that facilitates the transformation of certain social concerns and priorities into immigration law, policy and practice.<sup>175</sup> Many contemporary legal theorizations about discretion are framed by liberal preoccupations with the rule of law. The idea of discretion is thus intertwined with assumptions and ideals relating to the power of law, autonomy and freedom of choice. This view expresses the legal complacency that discretion is a space unconstrained to varying degrees by legal or legalistic rules. Ideally, in this space, autonomous individuals make rational, reasonable and objective calculations decisions and apply general legal

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<sup>174</sup> Salter, 2005, p. 39.

<sup>175</sup> Pratt, 2005, p. 53.

rules to particular individual cases.<sup>176</sup> Despite the discourse of “freedom of choice”, autonomous decision-makers still make decisions defined vis-à-vis legal constraints. Liberalism, as a mode of governing, imposes restrictions on the state’s power to govern individuals through coercion and force; yet, in contrast, it governs through, not against the freedom and autonomy of individuals.

The liberal conception of discretion awards freedom of choice and autonomy to decision-makers who are rational beings that will make well-informed decisions. However, as Anna Pratt argues: “whether discretion is regarded benevolently or critically, its essential and inextricable binary relationship to law is largely taken for granted”.<sup>177</sup> Discretion and law are constructed as distinct entities, which are presented as negatively correlated as the binaries of liberty and authority, freedom and security. She cautions us that this view that the only meaningful constraint on discretion is law, leads to a primary focus on the “surrounding belt of restrictions” rather than on the “hole” of discretion.<sup>178</sup> Where discretion is constructed as a problem, expressed in terms of arbitrariness or disparity, solutions are most frequently sought through the development and application of more legal rules to constrain, shape and guide use of discretion.

It remains in question whether discretion functions as a benevolent technology, which makes policy more humane. Since discretion exists as something essentially outside of law, it is therefore always already defined in contrast to law. Within the tenets of liberalism, discretion can be understood as a technology, which operates to divide and categorize people. For example, in welfare policy, discretion serves to distinguish

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<sup>176</sup> Pratt, 2005, p. 54.

<sup>177</sup> *Ibid.*, p. 54.

<sup>178</sup> *Ibid.*, p. 54.

between those truly in need and the lazy, undeserving poor. Like welfare policy, differential treatment of citizenship applicants is justified in reference to the oppositional and moralized categories of deserving and undeserving applicants. In effect, discretionary power is a key technology for the construction, reproduction and enforcement of dominant conceptions of the desirable citizen under a liberal regime of rule.<sup>179</sup> Discretion operates as a key technology which draws on moral distinctions between the (un)desirable citizens and consequently, justifies operations of sovereign power for those ushered into zones of indistinction, the rejected, deported and detained. Legal discretion and exceptionality enable and legitimize coercive practices, yet sustain liberalism.

Consequently, discretion deflects the legitimacy crisis one would presume in the gap between use of coercive force and prevailing liberal democratic values. Anna Pratt claims that discretion carves out a domain of freedom that reconciles the gap between law and equity, between formal equality and individualized justice.<sup>180</sup> It is important to evaluate this tension between discretion and exceptionality and the discourse of humanitarianism. It appears that in the spirit of protecting boundaries and sovereignty in the name of national security, use of discretion becomes less humanitarian and consequently used to legitimize exclusions. While the image of an essentially autonomous, free-thinking subject is the legal expression of autonomy and the central trope of liberalism, we also must consider discretion as a productive form of power in modern systems of rule.<sup>181</sup> This productive form of power not only reproduces elements of exclusions past through the exercise of sovereign power, but also operates through new

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<sup>179</sup> Pratt, 2005, p. 79.

<sup>180</sup> *Ibid.*, p. 214.

<sup>181</sup> *Ibid.*, p. 215.

modes of governmental power.

This thesis articulates that the border is continuously (re)constituted through a variety of sites. An array of authorities, technologies, forms of knowledge and modes of power shape border policies and make claim to the kind of desired population. The border is in continual production and enforcement, which therefore requires a variety of territorial and extraterritorial sites, of which risk management strategies are prominent. These technologies do not exclusively aim to normalize individuals through discipline, nor do they solely manifest the negative consequences of sovereign power. The final chapter of this thesis evaluates the interplay between sovereignty, liberalism and governmental power at the Canadian border.

## Chapter 4: Rupture as Attachment

The preceding chapter of this thesis examined changes to immigration policies and practices within the contemporary era of securitization. I argued that instead of being used for specifically humanitarian objectives, discretion although a by-product of liberalism, operates to facilitate exceptions and exclusions reminiscent of sovereign authority. This chapter evaluates the implications of a securitization era that brings us back to old-fashioned principles of sovereignty, or, rather if we left this sovereign era at all. Contemporary standardization and classification technologies veil implicit structural hierarchies in the modern state. I hope to unravel a complicated tension between the “gentle” humanitarian and liberal Canadian imaginary and a discourse of protecting sovereign borders. With the onset of a securitized climate in the post-911 era, enhanced security and border technologies may appear as a “rupture” to the welcoming Canadian identity. However, despite this rupture, I argue that the technologies associated with protecting sovereignty and securing borders operate to facilitate the very divisions that liberal and humanitarian policies enable.

In this chapter, I evaluate the tension between liberalism and exceptionality. The ‘nice’ aesthetic elements of liberalism, including alleged policies of humanitarianism, multiculturalism and respect for diversity also have a ‘nasty’, exclusionary and repressive underside. I aim to expose this ugly underside by drawing from Carl Schmitt on sovereignty and exceptionality and Immanuel Kant on liberalism and perpetual peace. Sovereignty, which I see as inextricably linked to security and the need to protect borders, appears within elements of liberalism. I will demonstrate in this chapter how the seemingly divergent ideologies of sovereignty and liberalism derive from analogous

assumptions about political existence and human nature. Finally, I will return to the theories that I introduced in the beginning of this thesis – governmentality and biopolitics – to discuss whether we can understand new “soft” immigration technologies – immigrant medical examinations, biometrics, permanent resident cards – as part of a new governmental power or simply remaining vestiges of sovereign power.

### **On Sovereignty**

In order to untangle the meaning of sovereignty and ‘sovereign power’ I will draw here on Carl Schmitt’s work in *Political Theology* and *The Concept of the Political*. In *Political Theology*, Carl Schmitt opens with the sovereign as he who decides the exceptional case.<sup>182</sup> The exception in Schmitt’s understanding of jurisprudence is similar to the notion of a miracle in theology. The sovereign must decide on both which situation may be exceptional and what to do about the exception in order to create or recover the judicial order when the existing order is threatened by chaos. A discussion of the exception is important as it helps us to understand the border between what is subject to law, where sovereignty reigns and the space of exception which is not subject to law. Once we understand sovereignty and the exceptional space, can we then understand the nature of law. In this respect, the “exception is more interesting than the rule”.<sup>183</sup> We can only have an exception if in fact we have rules. For a legal system to make sense normal situations must exist; the sovereign will decide whether this normal situation actually exists.

According to Schmitt, rules are human creations (i.e. they do not exist in nature)

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<sup>182</sup> Carl Schmitt. *Political Theology*. Trans. By George Schwab. Chicago: Chicago University Press, 1985. p 5.

<sup>183</sup> Schmitt, 1985, p. 15.

and do not control us automatically. Because the state of nature is unruly, law and politics must respond to the violent irrationalities of life in its natural form. The concept of the state presupposes the concept of ‘the political’. According to Schmitt, the state can be understood as the “status of an organized people in an enclosed territorial unit...it may be a machine or an organism, a person or an institution, a society or a community and enterprise or a beehive...or even a basic procedural order.”<sup>184</sup> Schmitt shares the belief with Thomas Hobbes that man is essentially dangerous and his primary goal is physical security. In the state of nature, friends are distinct from enemies and these distinctions produce violences requiring protection. In effect, secure political existence requires a strong, sovereign state that will ensure order, peace and stability. According to Schmitt, if as political scientists, we do not examine the exception, inhuman, non-political technologies become inevitable. Understanding politics necessitates understanding sovereign power.

Sovereign authority very closely aligns with the locus and nature of the agency constituting a political system. However, we are not to mistake sovereignty for politics. ‘The political’ is the most intense and extreme antagonism and “every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping”.<sup>185</sup> We must separate an understanding of the state and sovereignty from the meaning of politics. As the state has the authority to distinguish between ‘friends’ and ‘enemies’, it has a monopoly over politics. If the sovereign exists to protect its subjects, the subjects will have to obey the sovereign. The state can demand from its citizens the readiness to die. In effect, this claim over the

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<sup>184</sup> Carl Schmitt. The Concept of The Political. Trans, By George Schwab. Chicago: University of Chicago Press, 1996. p. 19.

<sup>185</sup> Schmitt, 1996, p. 29.

physical life of its constituents and distinguishes the state from and elevates it above all other organizations and associations.<sup>186</sup> In order to maintain peace and order, the sovereign authority is supported by an armed force as well as by bureaucracy, which operate according to rules established by legally constituted authorities.

Schmitt is concerned that modern constitutional developments aim towards eliminating sovereign power. In this respect, he rejects the liberal “normativism” of Kant and his intellectual followers. This liberal normativism, based on assumptions that a state can ultimately govern based on mutually agreed upon rules and procedures, he sees as contradictory with human nature, which is made up of particularities and individual necessities. In the modern context, politics rests upon the equality of its citizens and thus their collective differentiation from other groups. This appears in contrast to the friend/enemy dichotomy, or the distinctions according to Schmitt that make politics possible.<sup>187</sup> From this perspective, such a scientific attempt to classify and neutralize politics is denying the nature of politics itself.

Schmitt rejects the rationalism of the Enlightenment, which praises reason and dismisses the exception. Enlightened thinkers, such as Immanuel Kant, view politics and the creation of jurisprudence in terms of natural-scientific causations. Liberal thought, in contrast to Schmitt, attempts to regulate exceptions in pursuit of universalities. This does not sit well with Schmitt who views all law as situational. This contrasts with neo-Kantian beliefs that universal laws, or pure legal theories can exist and where subjective standpoints can be eliminated in pursuit of pure law. Schmitt is uncomfortable with the notion that law can be universally valid for all times and situations. Every legal order

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<sup>186</sup> Schmitt, 1985, p. 1.

<sup>187</sup> Schmitt, 1985, forward by Tracy B. Stong p. xv.

must be based on decisions. The concept of a legal order contains two contrasting elements – the norm and the decision – the legal order rests on a decision, not the norm.<sup>188</sup> Since all law is situational, the sovereign produces and guarantees the situation in its totality and has the monopoly on the last decision. The essence of state sovereignty must be defined not as the monopoly to coerce to rule but the monopoly to decide.<sup>189</sup> Within liberalism, only norms are of scientific, rational interest. Exceptions confound unity and the “rationalist scheme”.<sup>190</sup> Law outside of norms does not exist as pure, or natural law according to liberal theory.

Despite the liberal attempt to evade questions of exceptionality, Schmitt argues that the exception is more interesting than the rule. He argues: “the rule proves nothing: the exception proves everything. It confirms not only the rule but also its existence, which derives only from the exception”.<sup>191</sup> Further, “within the exception, the power of real life breaks through the crust of a mechanism that has become torpid by repetition”.<sup>192</sup> Such repetition, rationality and progress towards reason, glosses over the real nature of politics according to Schmitt. Liberalism changes the nature of ‘the political’. According to Schmitt, it neutralizes and depoliticizes what comprises the complexities and particularities of ‘politics’. This depoliticization – a “negation of the political” – leads individuals towards a kind of political practice where all forms of state and government must be feared.<sup>193</sup> Liberal ideology, he argues, does not produce a theory of politics, but merely a kind of political critique.

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<sup>188</sup> Schmitt, 1985, p.10.

<sup>189</sup> Ibid., p. 13.

<sup>190</sup> Ibid., p. 14.

<sup>191</sup> Ibid., p. 15.

<sup>192</sup> Ibid., p. 15.

<sup>193</sup> Schmitt, 1996, p. 70.

Democracy in this paradigm is an expression of political relativism and a scientific orientation liberated from miracles and dogmas. Liberalism and democracy emphasize negotiation as a cautious measure to transform bloody battles into parliamentary debate. Schmitt argues that this kind of structural, reasoned thought produces a technical thinking that no longer perceives political ideas. He claims that the modern state appears to be what Max Weber envisioned: “a huge industrial plant” where political ideas are only recognized when groups can be identified that have a plausible economic interest in turning these ideas to their advantage.<sup>194</sup> Differences appear to be veiled in the modern push to universalize political experience.

The attempt to veil natural unruliness in the name of a common humanity is misleading. Schmitt articulates that humanity cannot wage war because it has no enemy on this planet. The concept of humanity excludes the concept of an enemy because an enemy does not cease to be a human being and hence there is no specific differentiation in the concept of humanity itself. Wars waged in the name of humanity do not contradict this truth; in fact, wars of this kind would have an especially intense political meaning. When a state fights an enemy in the name of “humanity”, it is not a war for the sake of humanity, but a war “wherein a particular state seeks to usurp a universal concept against its military opponent”.<sup>195</sup> At the expense of this opponent, a state attempts to identify itself with the greater humanity in the same fashion as one can abuse the terms of peace, justice, progress and civilization in order to “claim these as one’s own and to deny the same to the enemy”.<sup>196</sup> To appropriate the term “humanity” has innumerable effects.

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<sup>194</sup> Schmitt, 1985, p. 65.

<sup>195</sup> Schmitt, 1996, p. 54.

<sup>196</sup> *Ibid.*, p. 54.

Specifically, denying an enemy the quality of being human and declaring him to be an outlaw of humanity, drives the agents speaking in the name of humanity to the severest inhuman capabilities.

### **At Once Harsh and Humanitarian**

The domain of immigration is simultaneously harsh and repressive, inclusive and productive. Border technologies operate to exclude the undesirable and include the desirable. Immigration technologies are multidimensional and expansive, coercive and enabling, harsh and humanitarian.<sup>197</sup> Inclusive and enabling governmental technologies – such as welcoming those refugees in need and reuniting families – certainly act upon those deemed worthy of citizenship who are ushered into “zones of inclusion”. At the same time, coercive and despotic practices persist in relation to those deemed unworthy and who are confined within “zones of exclusion” – the refugee camp, detention centres, the deported – and are ultimately excluded and expelled from the nation. With the use of these exclusive technologies, the premodern “spectacle” exercised by sovereign power is refigured as individuals are ushered into zones of indistinction or exclusion, enabled by liberalism discretionary policies. It seems to me that the spectacle is replaced with invisibilities; nonetheless, exclusions and judgment over life takes place by a hierarchical authority. In this regard, the state has the sovereign authority to demarcate and separate worthy from unworthy life and at the same time, is both harsh and humanitarian, repressive and productive.

As self-described by CIC, border control begins overseas and charity begins at

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<sup>197</sup> Pratt, 2005, p. 13.

home.<sup>198</sup> Border controls operate in many ways, including through front-line visa officers overseas, use of interdiction and overseas immigrant medical exams. This demonstrates ways in which the border is constituted and governed at other sites than the physical border in Canada. Overseas immigration screening is a key method of border control that does not necessarily occur at the geopolitical space of the border. When border control begins overseas and charity begins at home, it appears that security and protecting sovereignty is primary to any humanitarian policy. Humanitarian policies, in effect, occur in the residual space once border control mechanisms have been taken care of. Evidently, humanitarian aims are not the primary goal of immigration technologies.

Humanitarian practices in this thesis are tied to theories of liberalism. We can understand liberalism as a form of political rationality. Liberalism is a broad historical discourse that rationalizes and systematizes specific governmental programs and policies for the ordering of social life in particular, historically specific ways.<sup>199</sup> Liberalism and rational theory go back to the Enlightenment and ‘enlightened’ thinkers such as Immanuel Kant. Kant argued that through the use of rational analysis, man could arrive at a philosophical place where a just and lasting internal order could prevail. In order for this to materialize, systematic application of scientific, reasoned analysis through intellectual progress is required.

### **Liberalism and Rationality**

In order to reach a place of perpetual peace, where a law common to all man prevails, Kant argues that we need to discover rules or principles, which are logically

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<sup>198</sup> Treasury Board Report. [http://www.tbs-sct.gc.ca/rma/dpr/01-02/CIC/CIC0102dpr08\\_e.asp](http://www.tbs-sct.gc.ca/rma/dpr/01-02/CIC/CIC0102dpr08_e.asp)  
Accessed February 17, 2008.

<sup>199</sup> Pratt, 2005, p. 15.

independent of experience. These rules underlie moral decisions inherent in all arguments, which are only possible if individuals are free to act according to their will. Through a collective will, which binds everyone equally, individuals will find security. This collective will, or law, operates as a regulative ideal in order for man to work towards a cosmopolitan society. In order to reach a common peaceful and cosmopolitan society, history has to be understood as a progress towards rationality. Through this enlightened process, man will emerge from his “self-incurred immaturity”.<sup>200</sup> In order for this enlightenment to take place, all man needs is freedom. Freedom is essential for a man to make public use of reason. Man is not naturally rational, but through the cultivation of society, can work towards rational ends.

According to Kant, reason enables man to go beyond the limits of natural instinct. Through trial, patience and instruction, man can progress from one stage of insight to the next.<sup>201</sup> Despite the fickleness of human nature, man’s natural instinct also contains reason, which needs to be cultivated through society. As Kant describes: “nature gave man reason and freedom of will based upon reason”.<sup>202</sup> Once individuals work their way up from “uttermost barbarism” to the “highest degree of skill”, to inner perfection, will he then be able to take entire credit for doing so.<sup>203</sup> By engaging rationally in society, man can develop his natural capacities. However, man in this natural state also has a great tendency to be individualistic due to his unsocial sociability. This unsocial sociability causes man to isolate himself as a result of his desire to direct everything in accordance

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<sup>200</sup> Kant, Immanuel. Political Writings. Cambridge: Cambridge University Press, 1991. p. 54.

<sup>201</sup> Kant, 1991, p. 42.

<sup>202</sup> *Ibid.*, p. 43.

<sup>203</sup> *Ibid.*, p. 43.

with his own ideas.<sup>204</sup> Therefore, man must overcome his natural laziness to engage with society and cultivate himself in reasoned fashion in pursuit of an end goal of a common history and peace. A long, process of careful work is necessary for the education and cultivation of citizens.

Rationality is important for perpetual peace and inter-state cooperation. Kant argues that there is only one rational way in which coexisting states can emerge from the lawless condition of pure warfare. Like individual men, states must renounce their savage and lawless freedom and adapt themselves to public coercive laws.<sup>205</sup> States have duties towards citizens of other states in the spirit of a common humanity. Kant informs us of his principle of hospitality, which refers to the right of strangers not to be treated with hostility when arriving on someone else's territory.<sup>206</sup> He can be turned away so long as this does not cause his death, if he agrees to abide by the rules and codes of the host state. This concept of 'hospitality', where a stranger must adapt and conform to the rules and ideas set out for the receiver state prevails in our contemporary modern environment. Specifically, these ideas appear within our border and immigration technologies today.

### **Liberalism and Politics of Life**

Rationalities and programs depend upon the existence of governmental technologies – strategies and techniques such as biometrics and immigrant medical examinations – that give government practical, standardized and efficient results. Modern liberal immigration and border control technologies are concerned dually with

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<sup>204</sup> Kant, 1991, p. 44.

<sup>205</sup> Ibid., p. 105.

<sup>206</sup> Ibid., p. 105.

protecting public safety and public welfare. The Immigration and Refugee Protection Act clearly states this, as specifically demonstrated by the case of immigrant medical screening presented earlier in chapter two of this thesis. Public welfare has a specific connotation, that of protecting population as a whole and overlooking individual particularities. Contemporary technologies commit to public and economic security, in effect, necessitating system integrity. These liberal technologies of protecting the population, use of immigrant medical examinations and protecting the economy, can be understood through governmental modes of power.

Understanding liberal technologies in this way refers to the changing discursive field within which the exercise of power is conceptualized. These discourses operate as moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors.<sup>207</sup> In this liberal paradigm, individuals are governed at a distance, through autonomous agents, not through the direct rule of a sovereign power. Nikolas Rose argues that the politics of our current time can be understood as a politics of “life itself”.<sup>208</sup> This form of politics in our contemporary liberal era is centred upon a politics of managing and reshaping the vital capacities of human beings. This shift in power focused upon managing life vis-à-vis death derives from changes in rationalities and technologies of government. Specifically, transformations in the provision of security, welfare and health by the government, lead us to a time where individuals are controlled at a distance.

Liberalism assumes the natural existence of free rational individuals who require

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<sup>207</sup> Pratt, 2005, p. 16.

<sup>208</sup> Nikolas Rose. The Politics of Life Itself. Princeton: Princeton University Press, 2007 p. 3.

political structures to vindicate their natural form. Liberal legality functions as a metanarrative built upon these assumptions about natural, free and rational beings, that construes law in terms of universal principles grounded in the dictates of reason deemed intrinsic to all human subjects.<sup>209</sup> Under the guise of liberal law, administrative discretion becomes a key governmental technology that carves out a domain of freedom that negotiates or accommodates the apparent contradiction between the universality and the particularity of liberal law and that reconciles the gap between law and equity.

Technologies of this kind refer not to equipment or techniques, but rather, we can understand technologies as assemblages. These assemblages comprise social and human relations within which equipment are but one element. Drawing on Rose's definition, the use of the word "technology" in this thesis refers to structured rationalities including assemblages of knowledges, instruments, persons, systems of judgment, underpinned by assumptions about human life and human nature.<sup>210</sup> The technologies of immigration and medical examinations in particular, demonstrate this type of political rationality and governance over life itself. This thesis argues that these technologies are closely linked with contemporary risk management practices, which have futuristic properties. These predictive futuristic qualities, which reflect a liberal rationality, brings the future into the present and subjectifies individuals or groups deemed to be 'risks' to the state.

Understanding this politics of vitality draws us back to where this thesis began with a conceptual map of biopolitics. In the *History of Sexuality*, Michel Foucault states that: "For millennia, man remained what he was for Aristotle, a living being with the additional capacity for political existence; modern man is an animal whose politics place

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<sup>209</sup> Pratt, 2005, p. 16.

<sup>210</sup> Rose, 2007, p. 17.

his existence as a living being in question”.<sup>211</sup> Historically, sovereign power operated through the exercise of deciding life and death. In our modern era, contrary to sovereign power, a range of mechanisms operate to generate, incite, control, monitor and optimize individual and collective life.<sup>212</sup> Whereas wars of the past were carried out in the name of the sovereign, wars and border practices today are carried out in the name of protecting a population at large. Through governmental practices beyond sovereign power, life is managed in the name of the well-being of a population. As this thesis outlined in the introduction, biopolitical power according to Foucault operates in dual fashion: through the careful management of individual, disciplined bodies in order to maintain the rational efficient goals of the state and further, this power operates through a series of regulatory controls to manage the species body of the population as a whole. In this respect, biopolitical power operates as a “bipolar technology”.<sup>213</sup> I introduced biopolitics in the introduction of this thesis as a way of framing the approach or perspective guiding this project. The perspective of biopolitics highlights the operation of political power as a form of productive control and regulation of a population through rationalized technologies aimed at improving the vital capacity of the state.

With respect to border and immigration technologies, arguably, liberal political discourses serve to refashion sovereignty in a new form. This neoteric form legitimizes coercive practices, through use of discretion, which facilitate new forms of governmental and disciplinary governance at arms length. Those who are not citizens fall within the supposed “human rights” discourse and can make claim to their natural rights, but, these

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<sup>211</sup> Michel Foucault. History of Sexuality. New York: Vintage Books, 1999. p. 143.

<sup>212</sup> Rose, 2007, p. 52.

<sup>213</sup> Ibid., p. 53.

rights must be claimed and negotiated through the political and legal frame of liberal governments, institutions and structures. Even claims to a natural human self must face liberal structures which, given their discretionary, rational qualities, will require divisions and exclusions as sovereign power executes itself through separating (un)worthy life.

Regarding immigration and border control, practices of classification, sorting strategies and separating the “high risk” from the “low risk”, the desirable from the undesirable, operates as part of this moral, liberal paradigm. Borders are produced in the spirit of making citizens. Differential treatment of this regard is justified by moralized, normative judgment about the “good” versus “bad” citizen and even further, the “worthy” versus “unworthy” life itself. It is important to treat such moralizing discourses with caution. As Anna Pratt suggests, such moralizing discourses “frequently invoke some utilitarian consideration which links immoral practices to some form of harm”.<sup>214</sup> Through the operation of discretion, liberal regimes of government give these dividing practices legitimate effect.

While classic liberalism evokes notions of individual responsibility, accountability, autonomy and rational choice, neoliberalism suggests the importance of deterrence capabilities, individual responsibility and accountability. Individuals are required to be responsible citizens who take care of their finances and their health. In our contemporary neoliberal environment we witness a decline of the social elements of society. Our contemporary neoliberalism encourages autonomous, productive, self-sufficient citizens. The desirable immigrant is economically self-sufficient, productive and able-bodied in order to be as economically valuable to the state as possible.

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<sup>214</sup> Pratt, 2005, p. 17.

Within a neoliberal paradigm, formal government institutions play a much smaller role. Such regimes of government are characterized by anxiety, suspicion and a considerable distrust of traditional state institutions. Within the neoliberal paradigm, suspicion and anxiety prevail as our political climate legitimizes the use of risk management technologies to support the population. At our borders, this paranoia facilitates the neoliberal concern about fraud and threatening immigrants and refugees. Use of coercion and force to maintain law and order function as a last resort, yet nonetheless remain as a tenet of sovereign authority.

In our contemporary (neo)liberal regimes of government, the use of coercive force upon autonomous, free and rational subjects has to be cautiously justified and administered. While broad discretionary, racist, moral or ideological exclusions are antithetical to liberal legal ideals of natural justice and formal equality, exclusions that aim to protect national security and public safety are widely accepted as unproblematic with legitimate justifications.<sup>215</sup> Such justifications are widely articulated through technologies of risk management and given legitimacy through discretionary decision-making, which constitute them as neutral, objective and scientific rationales for national exclusions.

### **Politics of Life: Managing Risks and Protecting Borders**

By virtue of the inevitable failure of always knowing the unknowable, risk management technologies have the impossible drive to tame chance. This impossibility only further fuels the insatiable quest to develop better technologies of this nature. As a

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<sup>215</sup> Pratt, 2005, p. 221.

result, the desire to secure this unknown space regenerates the insecurities that propel the development of risk management technologies. These technologies operate on underlying assumptions about unknown foreigners, that they are risky, likely to be fraudulent and worthy of suspicion. Refugees face this stigma head on. Anna Pratt argues that the rights-claimant is always and already suspect.<sup>216</sup> In contrast to being received as a self-sufficient, entrepreneurial individual, ready to contribute to the productive goals of the state, the refugee at risk of persecution is perceived as a potentially risky refugee to the Canadian population, one who will be difficult to assimilate and a potential risk to the social welfare structure of the state.

In our contemporary (neo)liberal society, political rationalities aim at both protecting populations at large and demanding individual responsibility in the name of broader population management. Nikolas Rose argues that the tension between individual and collective responsibility is now posed differently. It is no longer a question of seeking to classify, identify and eliminate or constrain those individuals bearing a defective constitution or to promote the reproduction of those whose biological characteristics are most desirable, in the name of the overall fitness, of the population, nature or race; rather, it consists in a variety of strategies that try to identify, treat, manage, or administer those individuals, groups or localities where risk is seen to be high.<sup>217</sup> The binary distinction between ‘normal’ and ‘pathological’ are now organized around strategies of risk. Risk strategies focus on epidemiological surveys of the population at large, as well as identifying and developing preventative strategies for populations identified to be ‘at risk’.

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<sup>216</sup> Pratt, 2005, p. 18.

<sup>217</sup> Rose, 2007, p. 70.

Risk management technologies are not only negative and coercive but also productive. In addition helping the state regulate populations by classifying and filtering those seeking entry to Canada and searching out and removing the undesirables who get through, risk management technologies also construct identities and the meaning and value of a good citizen. These technologies are productive insofar as they bring in worthy individuals who will contribute to the states economy and vitality. As argued throughout this thesis, border control and immigration technologies constantly reproduce the border and historically specific configurations of the desirable citizen and national identity. This ability to configure the “desirable” citizen and meaning of national “identity” can be articulated as an artistic design. This artistic design implies an ongoing process of creating symbolic meaning to certain concepts. For example, the meaning of “human nature” can be understood as art. As different philosophers from different times conceptualize this ‘natural’ state differently – can we ever truly understand natural human capacities?<sup>218</sup> Despite their similar consideration of natural unrulyness, both Kant and Schmitt have different conceptions about humans and their natural capacities. These different conceptions provide the founding assumptions for theory today – Schmitt on sovereignty and realism, Kant on peace and liberalism – and each theorist leaves us with different understanding of their masterpieces on human instinct and natural capacity. These masterpieces remain present today through contemporary debates about authority, states, sovereignty, individuals and rationality.

In this thesis, border and immigration technologies are also artistic technologies for their ability to attach symbolic meaning to a set of political practices and

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<sup>218</sup> Rose, 2007, p. 80.

designations. These symbolic practices and designations, either “humanitarian” or part of “securitization” are essential to protecting Canadian sovereignty. These creative techniques, through pledging allegiance to either humanitarianism or securitization, produce divisions between the citizen and a non-citizen, the humanitarian and the individual in need of humanitarian protection and between (in)secure nations. Each divisive technology can be understood as both repressive and productive for producing a crafted identity at the expense of an excluded being or subject from the Canadian society.

While sovereignty and risk are not the same, they relate to each other. With coercive immigration and border technologies such as deportation and detention, sovereign authority can be enacted through discretion and ministerial authority to suspend law. Governmental technologies are not necessary to reform, discipline or normalize the deported or detained. With immigration technologies more broadly, despite their inherent connection to the territory of the nation-state, there is a mix of different authorities and technologies that reveal an interplay between sovereign and government power. Furthermore, justifications for detention and deportation are not couched in sovereign discourse. Instead, the justification for these technologies are grounded in governmental objectives to secure the population or economy as a whole.<sup>219</sup> These justifications prioritize the need to protect “public safety” and national security, which appear as part of a biopolitical management regime. While the technologies of detention, deportation and the issuance of security certificates appear as reminiscent exceptional elements of sovereign rule, more implicit technologies including immigration medical examinations and biometrics appear as governmental population management strategies.

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<sup>219</sup> Pratt, 2005, p. 220.

The justifications for the dividing technologies of our liberal state consist of protecting the public and promoting order and tranquility. The need to promote the population is used to advance sovereign state power and territorial protection. Technologies of immigration and border control work to regulate the make-up of the population, maintain order and distinguish between citizens and non-citizens. These technologies, in effect, aid the reconfiguration of citizenship and meaning of sovereignty in a global context. As a consequence, the use of governmental technologies and sovereignty can be understood as mutually constitutive.

### **Summary**

This thesis argues that we can understand the Canadian border as a continuous design. By creating dividing technologies, state power operates to craft the make up of its population. The border is creatively constituted and reconstituted through the operation of “intersecting authorities, practices, technologies, forms of knowledge and governing regimes that include but are not limited to legal processes and the formal institutions of government”.<sup>220</sup> By focusing on historical changes to immigration, this thesis aimed to disrupt assumptions about liberal immigration technologies that we take for granted. By historicizing immigration technologies, with an emphasis on biological regulation and the development of risk management strategies, I argued that a range of threats, dangers and uncertainties shape the Canadian border, which at once both (re)produces border security and is a byproduct of such anxiety and (in)security.

This thesis presented the case of immigration and specifically the assemblage of medical screening and examinations. Despite a new neoliberal quality of control, which

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<sup>220</sup> Pratt, 2005, p. 222.

includes progress towards inclusive population-health based technologies for newcomers, exclusionary, sovereign assumptions remain in tact at the Canadian border. In the same vein, humanitarianism itself operates historically and in the present time as a protective discourse, which stems from assumptions about sovereignty and state control. The political climate today, with heightened emphasis on regulating identities and excluding “undesirable newcomers” operates in line with the protectionist discourse of humanitarianism. Humanitarianism, inextricably linked with liberal changes to immigration policies, does not operate as an entirely distinctive discourse from securitization. While certainly these modern border control technologies take on new qualities of regulation, specifically the regulation of populations and the protection of the health and welfare of Canadians broadly, there remains a continuity of sovereign practices. What appears to be “new” practices of immigration regulation and population management actually re-produce historic, exclusionary practices.

Canada’s sovereign right to select who may enter and reside in Canada remains institutional to immigration policy and practice today. As Anna Pratt describes, this right has “always represented the bottom line in the justification of Canadian immigration law, policy and practice and of the broad tracts of ministerial discretion in this field”.<sup>221</sup> As previously discussed in chapter two of this thesis, speaking in 1947, Prime Minister McKenzie King expressed how admission to Canada is not a right but a privilege and consequently, immigration law and policy must not interfere with the character of the nation:

Canada is perfectly within her rights in selecting persons who we regard as desirable future citizens. It is not a ‘fundamental human right’ of any alien to enter Canada. It is a privilege. It is a matter of domestic policy...the people of Canada do not wish, as a result of mass immigration, to

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<sup>221</sup> Pratt, 2005, p. 75.

make any fundamental alteration in the character of our population...any considerable Oriental immigration would be certain to give rise to social and economic problems.<sup>222</sup>

Although explicit expressions of racism have formally been removed from immigration legislation, less visible and systemic forms of exclusions persist. Concerns about Canada's economic absorptive capacity continue and this sovereign principle that "entering Canada is a privilege and not a right" remains influential. King's statement in 1947 makes explicit and racist reference to potential threats to the "character of our population" posed by mass immigration in general and by Oriental immigration in particular. This racism demonstrates how racist beliefs, articulated and applied in part through the deployment of national "unity" discourses, had been socially, legally and politically dominant at that time and earlier.<sup>223</sup> Until the 1960s, racism intermingled with morality in the subjectification of (un)desirable citizens and (un)desirability linked discursively with the need to protect national purity. Today, although the subjectification of (un)desirable citizens is no longer explicitly presented in terms of protecting national purity, implicit forms of immigration technologies are attached to historical elements of sovereign exclusions.

The common view of the 1976 Immigration Act depicts a liberal triumph over illiberal policies. However, there are many elements of this liberalization that operate as illiberalities. If we consider liberalism as an active form of government, we can see the activities of protective liberal or humanitarian rule operate through the substantial extension of discretion in matters of border regulation under the Immigration Act, which operate as equally illiberal control measures in line with previous immigration technologies. Law and discretion are useful state technologies, which, through a hands-

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<sup>222</sup> Quoted by Anna Pratt, 2005, p. 75.

<sup>223</sup> Pratt, 2005, p. 75.

off approach for liberal rule, enable traditional exclusive practices.

While a conventional reading of liberalized immigration technologies in the 1970s supposedly marked the beginning of a new era, this reading focuses only on the explicit claims in immigration legislation. This view, while focusing on the supposed nondiscriminatory dimensions of policy, glosses over the extensive use of discretion and implicit attempts to protect the population at large and to secure the economy and public health of the population as a whole through the creation and cultivation of healthy and productive citizens. While the way in which the technologies of discretion, border regulation and immigration practices are carried out take on new modes of operation, which can be understood through a liberal governmentality, these technologies also reify sovereign protectionism, in effect, solidifying sovereign assumptions of the past in the spirit of a new humanitarianism.

Chapter one of this thesis outlined the contemporary Canadian imaginary and the self-righteous discourse of Canadian humanitarianism. This chapter demonstrated that this discourse, including respect for difference, welcoming diversity and policies of multiculturalism, appear side by side with discourses about protecting sovereignty and state boundaries. The description of this apparent paradox demonstrated how even the ‘nice’ elements of humanitarian policies are caught up in protective discourses. By engaging in a close reading of historical discourses and practices of immigration, this chapter outlined that despite legislated transitions to make the Canadian immigration program more inclusive, exclusionist assumptions prevail.

Chapter two of this thesis continued the historical contextualization of immigration practices in Canada since confederation. This chapter evaluated historical

discourse surrounding foreigners and immigrants in Canada. By introducing the shifts and trends of immigration legislation and practices in Canada, this chapter demonstrated that despite efforts to liberalize the selection process for newcomers, elements of discrimination remain as our nation-state sets out to select the “best” immigrants, those who are able-bodied and capable of contributing to the productive goals of this state. In order to highlight this dilemma in detail, the second section of this chapter focused on the assemblage of immigration technologies that make up the medical screening process for newcomers. By conducting a discursive and policy review of this process, which included a review of legislation, policies, operational manuals, political statements and in-person interviews, this chapter demonstrated that the use of immigrant medical examinations reveal governmental modes of political governance, where these diagnostics are justified in accordance with the biopolitical objectives of protecting the public health and safety of the Canadian population at large.

Chapter three also looked at new technologies of immigration and border control. Specifically, this chapter evaluated how immigration politics are embedded within a heightened discourse of securitization. This discourse – a seeming paradox in contrast with the discourse of humanitarianism – coincides with all kinds of rules and exceptions embedded within the management of immigrants and borders. The goal of this chapter was to highlight the contemporary era of securitization and how this influences the development of technologies. Specifically, this chapter discussed border technologies of biometrics, permanent resident cards, passports and the use of security certificates to show how our Canadian state, in the spirit of protecting the Canadian population, exercises control through a variety of mediums, which demonstrate not only sovereign

authority but also governmental power. Flexible legislative frameworks, ministerial exceptions and discretionary decision-making facilitate these processes. In addition, this chapter evaluated the prevalence of “risk management technologies” which concern protecting Canadians from potential threats. These risk management technologies appear dually as repressive and productive forms of governance.

Finally, the concluding chapter of this thesis examined the assumptions driving our contemporary governance structures using theories of sovereignty and liberalism. Drawing on Carl Schmitt and Immanuel Kant, this chapter began by discussing the similarities and differences between these approaches with respect to conceptions of the state, law and human nature. These theorists were selected for their lasting effect and impact on contemporary theories about the state today in the form of general contemporary debates between realism and liberalism. The use of discretionary decision-making remains an area of administrative regulation today that is subject to both realist and liberal critique. In this regard, it becomes apparent that the esoteric rationality of liberal rule is strikingly similar to the discourse of sovereignty and the need to protect state boundaries.

Each paradigm – that of a sovereign authority and liberal rationality – faces exceptionalities; in effect, we cannot so easily separate “humanitarian” politics from sovereign “politics of security”. Therefore, we can understand “new” securitization practices as attachments to not only the enabling forces of humanitarian discourses, but also the origins of sovereign control. Despite apparent differences between Schmitt and Kant, theories of sovereignty and liberalism both serve to (re)produce dividing qualities between desired and undesired citizens within a population. In effect, each approach

separates qualified from unqualified life.

In our contemporary era, this demarcation between qualified and unqualified life can be understood through theories of biopolitics, as presented in the introduction of this thesis. Chapter four ended with a discussion of a new form of governmental power – the governance of life – a biopolitics of rule over life itself. In this section, I drew on Nikolas Rose and his discussion of biopolitics, life management strategies and risk technologies as presented in his book *The Politics of Life Itself*. Future research about contemporary biopolitical management strategies, specifically with respect to biological surveillance and biological regulation, would certainly benefit from Rose’s framework on vital politics and a new form of “biological citizenship”. A (re)conceptualization of governmental power from this framework shows how bodies within states are included into the state for their productive and healthy capacity to contribute to broad health-based population management strategies. While the exclusionary tactics of immigrant border policies remain today – as changes are made in this field to become more inclusive and population-health based – revisiting the questions presented in this thesis will become crucial to our understanding of the complicated craft of a healthy polis in Canada.

## Appendix A: Thesis Summary and Conceptual Map

This summary presents a conceptual map to aid the reader connect the theories to the case study in this thesis. As outlined in the abstract, this thesis demonstrates a concern with how the Canadian state constructs borders in a dual fashion: to both *exclude* and *include* foreigners. The border operates in an *inclusive* fashion as the state and associated governmental structures operate to form and create the subjectivity or identity for the Canadian population. By tracing immigration legislation, policies and discourse since Confederation, this thesis suggests that despite changes to liberalize or humanitarize immigration technologies, these policies and discursive contexts alike contain exclusionary principles embedded within the guise of a more egalitarian and humanitarian framework.

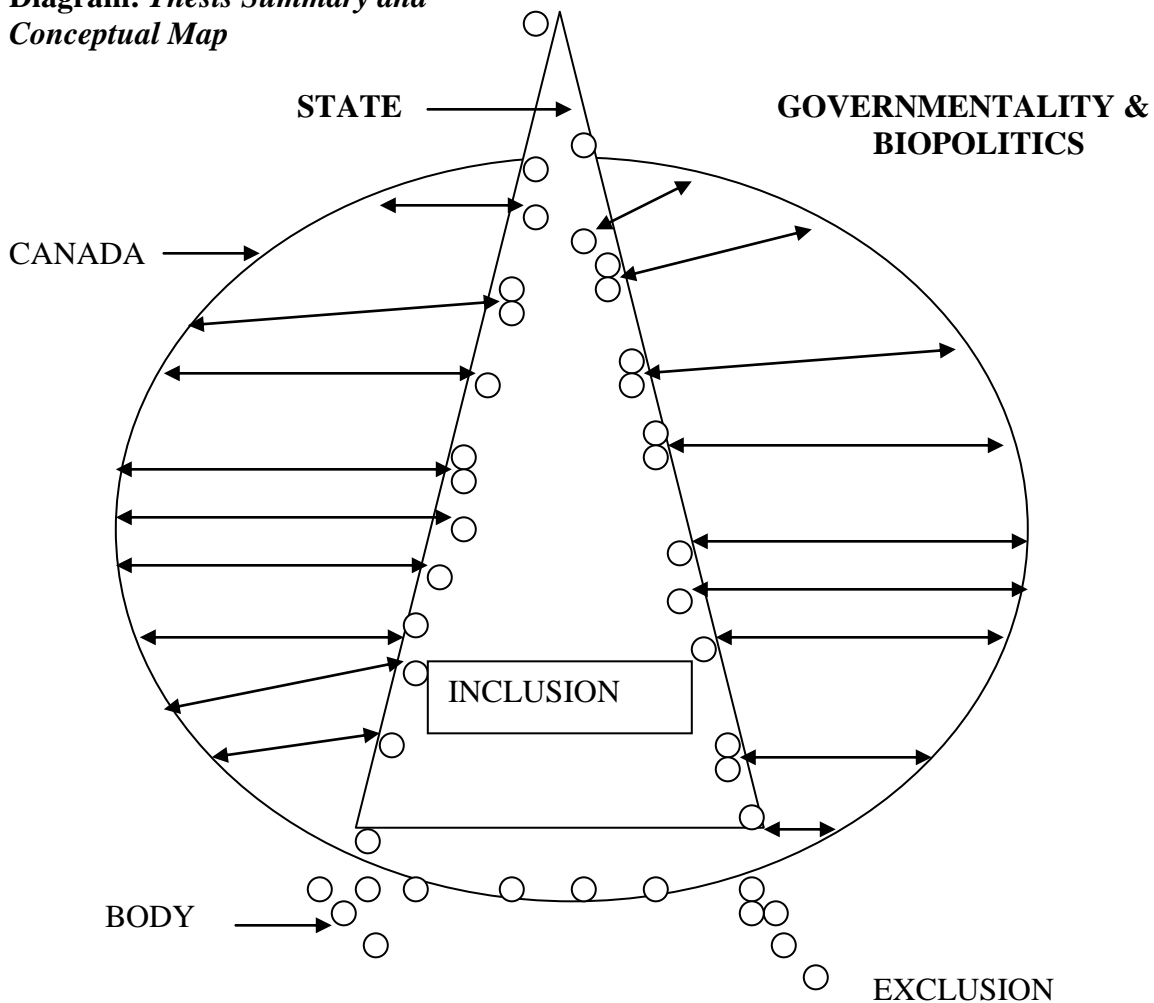
In order to focus this process of border inclusion/exclusion more precisely, the thesis selected the case of immigrant medical examinations (IMEs) and biological or medical screening for immigrants to Canada since confederation. This assemblage of border technologies was selected for its seeming contradiction to what we might consider a relatively inclusive, diverse, multicultural and humanitarian country. The case of the IMEs reveal how discursively, this specific technology operates to *exclude* the unhealthy – those threatening to public health, public safety or those deemed to be an excessive demand to health and social services – despite the Canadian government's supposed commitment to inclusion and tradition of social justice.

This thesis responds to the following questions: By evaluating specific border technologies of immigration, how can we evaluate the Canadian government's construction of citizens? How do technologies such as IMEs, biometrics, passports and permanent resident cards (PRCs) serve to reify the image of a certain kind of citizen? Finally, how do these border technologies seem to work in a dual exclusive and inclusive fashion? What are the implications of the inclusive dimensions now and what do policy trends tell us about the future direction of these practices?

In order to problematize these tensions, this thesis draws on the work of Michel Foucault and Nikolas Rose to evaluate the case through the frameworks of governmentality and biopolitics. Governmentality refers to an attempt to understand the characteristics of liberalism as a mentality of government with the state as a decentred locus of power. We can examine this mentality through not just the state itself but the effects or processes of the state in the form(s) of law, institutions and society. By connecting governmentality to biopolitics and biopower, this thesis aims to uncover the Canadian government's role in creating the healthy and productive subjectivity of its citizenry. Biopolitics in this thesis refers to a form of power, which operates through the optimization and management of life itself. Biopolitics refers to a governmental endeavour to rationalize the issues presented to governmental practice by disciplining, optimizing and constructing bodies for the productive goals of the state. Bodies become inserted into a series of technologies where administrative bodies carefully calculate and manage life itself. As policy directions suggest moving towards a more inclusive regulatory regime and have more *inclusive* intake medical procedures for newcomers, a biopolitical framework and what

Nikolas Rose terms "biological citizenship" will have great relevance.

**Diagram: Thesis Summary and Conceptual Map**



This diagram is a somewhat artistic attempt to capture the processes of inclusion/exclusion at the Canadian border. The triangle represents the state the physical boundaries that protect Canadian sovereignty. The triangle represents the point where IMEs are conducted. The small circles represent bodies. Those outside the state are those bodies rejected. Those inside the state are those included. The bodies which are included reify the metaphysical boundaries or conceptual boundaries of "Canada", represented in this diagram by a circle. The bodies let into the country reify a different kind of boundary – symbolized by the arrows as a process of governmentality – to constitute the healthy and productive Canadian society. We can understand this governmental process through a biopolitical lens, which requires optimization and inclusion of health bodies into the Canadian society to qualify the population.

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Immigration and Refugee Protection Act and Regulations 2001. Accessed from: <http://laws.justice.gc.ca>

Overseas Processing Policy Manual 15. Accessed from: <http://www.cic.gc.ca/manuals-guides/english/op/index.html> Accessed November 25, 2006.

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<sup>224</sup> Five interviews were held with policy-makers in Ottawa from the Public Health Agency of Canada and Citizenship and Immigration Canada. Three interviews were held with front-line immigrant workers in British Columbia. Four of these interviews are cited directly in this thesis. An additional phone interview was conducted on March 21st, 2008 with former public official and current academic and consult who specializes in the field of immigrant medical examinations.