Critical Perspectives on Formal Governance of and by Those Identified as Mothers

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INTRODUCTION

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"Sometimes the strength of motherhood is greater than natural laws."
— Barbara Kingsolver, *Homeland and Other Stories* (2013)

Mothers are subject to regulation by law and they are also agents involved in co-creating, enacting, enforcing laws and representing people in processes of law. Law is a formal mechanism through which mothers are governed and it is not of course the only discourse through which mothers are regulated. Definitions of the "good" and "bad" mother are discourses with governmental effects (Foucault), shaping and curtailing the conduct of those actors identified as mothers (Rich). Mothers are subject to a wide variety of forms of social regulation, including through discourses of "intensive mothering" (Hays; O'Reilly; Ennis) through which term feminist researchers have critically unpacked how performing gendered expectations of self-sacrifice and submissiveness is mandatory for mothers. Feminist criticism by many scholars has unpacked how cultural expectations of what constitutes "good motherhood" are very narrow and exclusionary (; O'Reilly; Hughes-Miller et al.). Far from becoming a freer space in the contemporary moment than in the past, the identity and work of motherhood are social locations in which mothers are more than ever before judged, demonized, and stigmatized for issues and problems in their children's lives. This book takes as its subject of focus a particular genre of social regulation, that is, formal mechanisms by which mothers govern and are governed.

No clear, bright line can be drawn between formal and informal means of regulation of mothers. Legal regulation has its moral and cultural content, while moral regulation can and often does invoke the law (Glasbeek). Popular culture, too, can act as a source of governmentality in as much as it informs popular understandings of law that have themselves a materiality (Sarat), affecting what laws are enforced, through reporting rates and choices made to commence civil legal action. Where mothers are formally governed through processes of public policy and law, official texts intersect

with cultural understandings of who mothers are, and normative assumptions about who mothers should be and how they should behave.

Consequently, it will be beneficial for those reading this book to also consider the content of other works of maternal feminist scholarship that deal with discourses of intensive mothering in seeking to critically analyze the complex dimensions of how mothers are regulated and how they participate in regulation. As a working definition of its particular subject matter of formal governance, this book relies on a social constructivist understanding of regulation and law. It takes a positivist approach to discerning the content of laws and regulations which is, in turn, informed by an artifactual approach to those texts that understands law as socially embedded (Silbey)**.**

Formal governance is understood as a set of "sovereign commands," that is, general orders made by a designated authority. These commands are sets of positive social norms that characterize and constrain actions and people, and uniquely amongst forms of social government, they are backed up explicitly by threats of sanction, which include socially legitimized force (Austin; Bentham). The literature review in this introduction therefore, starts by focusing on describing legal and regulatory frameworks in lieu of starting from a judgment on their moral or ethical legitimacy (Saunders and Bromwich 8). The textual location of these commands is in officially recognized documents, such as formal legislative provisions, case law, and regulatory provisions of a variety of kinds. Understanding that these commands and their social context are mutually constitutive, this book is themed around considering those formal governmental frameworks critically in their social and discursive contexts.

While, as Foucault's work makes evident, the governmental effects of informal mechanisms of social control should not be underestimated (1978), it would also be a mistake to underestimate the power of law and other formal discourses of regulation (Golder and Fitzpatrick). Formal mechanisms by which mothers govern and are governed are of tremendous significance to study in large part because of their important material effects. Formal mechanisms of regulation can restrict mothers' liberty, affect their access to resources (e.g., social welfare funding), and remove their children from their care. As such, formal mechanisms of government significantly impact and shape mothers' lives, and in particular impact the lives of mothers living at the margins, which are too many.

Accordingly, this anthology provides a variety of contributions that identify and discuss how law, public policy and governmental administration, management, and operations significantly impact and shape mothers' lives. It explores how systems of law, regulatory measures, courses of action, and funding priorities concerning mothering and motherhood shape and impact mothers' lives. It also looks at how mothers participate as social actors in the production, maintenance, and enforcement of formal governance.

In the pages that follow, this introduction situates legal governance of mothers in a variety of kinds of formal governance to which mothers are subject and looks at ways in which they participate in that government, especially through law. This review starts from the most to least overt ways in which mothering, mothers, and motherhood are formally governed. The less overt, or less direct, means by which mothers are formally governed are not less important than the more obvious ones. They are simply more insidious. First, in the following, we look at ways in which mothers are directly governed by the explicit formal governance set forth in law. In this section, we discuss child protection, criminal, health, and education law. Second, we discuss formal regulation that indirectly shapes and channels mothers' conduct and experiences, by affecting mothers' financial and social circumstances, such as maternity and parental leave policies, and how those regulatory frameworks govern mothers' conduct. Finally, we look, in historical and social context, at rates and mechanisms of mothers' participation in the construction, maintenance, and enforcement of formal governance frameworks. Of necessity, this introductory literature review provides a survey sampling of forms of formal governance. It neither seeks nor claims to be exhaustive but rather puts forward illustrative examples of prevalent social and legal phenomena.

Background and context

Direct and indirect formal regulation

Direct regulation – child protection and family law

Of most obvious significance to consider when contemplating formal regulation of mothers are the legislative and regulatory regimes that overtly and directly determine who is legally (dis)entitled to occupy the status, and carry on the roles, of mother. The legal regimes that have these governmental effects are found in child protection law and family law.

Formal regimes for child welfare law are ubiquitous throughout Western democracies. While these regimes claim explicitly, in varying ways, to set up formal regimes to protect children from harm and support their "best interests" (Bala et al.) , these are legislative and regulatory regimes that attach the concept of the "good" or "bad" mother to legal obligations. They define and constrain who is recognized legally, ultimately, as the mother of a child by empowering the state to remove children from their parents if there is a need to protect them. Thus, child protection laws have, by operation of their processes, the power to strip a mother of her maternal status by finally making her child a state ward or ruling the child is to be placed for adoption (Bala et al.).

The existence of child protection regimes is hard to critique – who, after all, would speak against protecting children? However, there are important ways in which these regimes are often problematic. Research has shown legal regimes for child welfare to involve power differentials and have a disproportionate impact, across jurisdictions, on financially under resourced, racialized, Indigenous, or otherwise marginalized mothers. Decisions whether to report protection concerns, and how to deal with them, are made in these systems by social workers, health care providers, educators, and community members, as well as lawyers and judges, rendering the systems vulnerable to any discriminatory attitudes prevalent in those communities (Bromwich, "Still Wearing Scarlet." 2017).

Many social researchers have critically unpacked how performing gendered expectations of self-sacrifice and submissiveness is mandatory for mothers. While the obligation to mandatorily perform "good" motherhood is imposed on all mothers, it is more possible to attain for some than others. Women excluded from, unable to comply with, or resistant to, the stereotypical requirements of white, middle-class, appropriately feminine, self-abnegating motherhood have disproportionately been found to be legally "unfit" under child welfare laws (Bromwich, "Still Wearing Scarlet?"2017). Indigenous women, single mothers, and even working-class women have been excluded from the stereotype of the "good mother" and hegemonic understandings of motherhood (Bromwich, "Still Wearing Scarlet?"2017; O'Reilly) in ways that render the construct of the "unfit mother" problematic as always already constructed in discriminatory, exclusionary, and oppressive ways.

Legal reforms have done less than is assumed to erode or eradicate the prevalence of stereotypes about class, race, and socioeconomic status as defining the "bad" or "unfit" mother in legal decision-making (Bromwich,

"Still Wearing Scarlet?" 2017). Law reform has not overwhelmed the power of the discursive figure of the "unfit" mother in contributing to inequality and marginalization for racialized minority mothers, including Indigenous women, mothers of lower socioeconomic status, and mothers with disabilities. A variety of representative figures in discourse of the "unfit mother" continue to contribute in complex ways to the disempowerment of mothers across a variety of contexts in their involvements with child protection systems. Child protection decisions are manifold micro processes taken in an opaque web in which child protection law is neither majestically separate from social structures, conflicts, and inequalities, nor purified from the "ordinary meaning" of its terms. Further, it shows that, circulating within that context, are problematic discourses of what constitutes maternal fitness and overlapping assumptions about fathers and patriarchy (Bromwich, "Still Wearing Scarlet?" 2017).

Further, in principle, the laws and structures made available by child protection systems are often constructed in ways that do not support marginalized mothers in developing skills, improving health, and accumulating resources but too often focus on removing children into state care. Removing children into state care places them into systems for foster care and adoption that are in far too many cases substandard in what measures of safety, education – and in a situation of tragic irony – protection they can provide (Weinberg). Far too many children are harmed in foster care (Weinberg), and far too many children who have been raised in state care go on to become criminalized and incarcerated as adults. Finally, it is clear that widely held stereotypes about who can be a "good mother" too often inform the ways in which a myriad of decision-makers in child welfare systems make determinations about whether parents are "fit" to care for their children (Bromwich, "Still Wearing Scarlet?").

Across jurisdictions, there are invariably formal laws that systematize how kinship, that is, family membership, is reckoned and provide processes for determining who is legally recognized as a parent to a child, as well as who is entitled to have custody of, and access to, those children (Eekelaar and Thandabantu Nhlapo). These laws include legislative and regulatory regimes for marriage, separation, divorce, child support, custody, and access, as well as adoption.

Family law presents another set of laws and formal regulations that is connected to child welfare law and is a technology through which mothers' foundational roles and status as mothers are formally governed. Through the machinations of family law, determinations are made as to whether mothers

reside with, or even see, their children. Family law legislation, regulations, and processes also determine how much, if any, support children are entitled to from their parents, including their fathers as well as their mothers (which is significant as, in the majority of cases, children still reside with their mothers after parental separation) (Fodden). Finally, family law determines who is legally a child's mother, and also affects the legal recognition of other familial relationships, such as who is assumed to be a child's father, and what entitlements or obligations flow from those relationships. Through adoption law as well as family law more generally, legal determinations are made as to who a person's legal parents are.

While regimes for family law arrange private matters between parents, other family members, and children, they also have public effects in that they determine who is legally a mother to a child, and under what conditions in terms of time, authority, and economics to a large extent, the mother can parent (Fodden; Herring). Child and spousal support are also set by these family law regimes (Fodden; Herring).

Although it is generally simpler under the law to determine who is a mother to a child (as opposed to legally ascribing paternity), there are situations in which determining maternity is more complex. For instance, mothers who are same-sex partners of other mothers are not always legally recognized as mothers to their partners' children, even if they have acted in the place of a parent to those children since birth (Cahill and Tobias). Another complicated situation arises where there are more than two adults who would like to be legally recognized as parents to a child, and, at least theoretically, all of them could be mothers. This might arise in a polygynous or polyamorous household, or could become controversial even without any conjugal relationship between adults who are friends. Adoption is another situation where legally determining who is a mother to a child can be complex, as is the sometimes ambiguous legal status of stepparents.

While this is no longer the case in Canada, in some places, a mother's matrimonial fault, such as her alleged adultery, can be used as a basis to prevent her from having custody of, or even contacting, her children (Eekelaar and Thandabantu Nhlapo). At the level of international law, the Hague convention reinforces family law by setting out where children should reside, or continue to reside, and assuring the return of children removed from their habitual residences to other signatory countries (Bromwich, "International Law Criminalizing Motherhood"). Thus, systems and processes of family and child protection law are obvious and significant dimensions of how mothers are formally regulated.

Direct and indirect regulation through
criminal law, justice, and corrections

Another area of formal regulation that plays an important role in formally regulating mothers is the criminal field. The formal legal texts comprised by criminal law, as well as the processes, regulations, and other policies in place in the criminal justice and correctional systems of a jurisdiction are important mechanisms through which mothers are formally governed in overt and also in less obvious ways.

Mothers can, by law as a form of social regulation, be criminalized. They, and women overall, are criminalized and incarcerated at rates lower than men in general (Eldjupovic and Bromwich), but their incarceration tends statistically to have a more significant and more immediately devastating impact on family units because mothers tend more often than fathers to have primary care and custody of children (Eldjupovic and Bromwich). The criminalization of mothers relates to social (in)justice, mass incarceration, oppression, and marginalization. Pre-existing, widely assumed figures of the "unfit mother" are involved in how governmentality operates in criminal justice and correctional systems. When considering formal regulation of mothers, it is tremendously important to bear in mind mothers' encounters with systems of control, confinement, and criminalization, as well as their experiences of care (Minaker and Hogeveen).

In general, "true" criminal laws, or *mala in se*, are those provisions that assign legitimate penal consequences, stigma, and loss of liberty for breaches of what is understood by a society to reflect its basic moral order (Saunders and Bromwich). Like all other areas of law, criminal laws are different in different jurisdictions. The proportion of criminalized and incarcerated women in Canada's Federal and Provincial custody systems is quite small relative to that of men (Minaker and Hogeveen; Eldjupovic and Bromwich). Other countries also consistently report significantly smaller proportions of incarcerated women, compared to men**.** However, while the rate of incarceration overall is increasing, incarceration rates of women are growing faster than those of men. In recent years, across many countries including Canada, there has been overwhelming growth in the numbers, both total, and per capita, of incarcerated women. Racialized women are increasingly overrepresented in the criminal justice and correctional systems; in Canada this concern extends especially to Indigenous women (Eldjupovic and Bromwich).

Certain criminal laws have historically been applied, and some continue to apply specifically to mothers. For instance, provisions for infanticide apply specially only to mothers. This is a criminal offence for which mothers are assigned lower criminal penalties in relation to the death of their own infant than they would be were they found responsible for the death of another human being, as is provided for by s. 223 of the Criminal Code of Canada. Other provisions affect mothers disproportionately, while they can be applied to others, such as obligations to provide children the "necessaries of life" under s. 215 of the Code. Also relevant here are the criminal provisions that limit what forms of birth control are available and can have the governmental effect of ensuring that women who do not wish to carry a pregnancy to term nonetheless become mothers. This would include the provision, under s. 287 of the Criminal Code of Canada that formerly made it a criminal offence to bring about a miscarriage. Historically, mothers specifically, and women and girls in general, were subjected to criminal penalties for offences, such as the status offence of "incorrigibility" in Canada in relation to allegations of "promiscuity" in ways different from persons socially located with different identities (Sangster). Similarly, laws against prostitution also disproportionately affect women in general, and mothers in particular. If they are sex workers consensually, or prostituted without their consent, these mothers run the risk of both incarceration and of losing their children through the machinations of the child welfare system (Bromwich and DeJong).

In addition to being disproportionately charged for different types of criminal offences relative to other classes of persons, mothers also have different experiences in the criminal justice system than do others. Mothering, criminalization, and incarceration are generally perceived as being contradictory. Mothering is distinctly or primarily a female phenomenon, while incarceration is primarily, statistically, and stereotypically, male (Eldjupovic and Bromwich). Similarly, it is consistent across countries that the number of incarcerated males by far exceeds the number of women. As a result, incarcerated mothers are "doubly stigmatized" or "double odd" (Eldjupovic and Bromwich). Incarcerated mothers are not doing what social expectations dictate that "good" mothers should do (Hughes-Miller et al.).

On the one hand, being a mother may support the argument that there exist mitigating factors for the purposes of s. 718 of the Criminal Code, factors that can serve to alleviate the sentence imposed on a convicted person. On the other hand, involvement with the criminal justice system can have a tremendous negative impact on mothers. Women may be forced to give

birth and become mothers in custody while shackled, and without proper medical assistance or support (Eldjupovic and Bromwich). Furthermore, mothers involved in the criminal justice system as accused or inmates are at risk of losing their children through the operation of child welfare laws (Hughes-Miller et al.). They may have no access to their children for long periods of time, and their children may be made wards of the state, and even adopted into different families while they are in custody.

While the written law is important, it is not all-important. It is, of course, significant to remember that the criminal justice system is more than just the expressly written laws contained in a text such as Canada's Criminal Code (Saunders and Bromwich). It is clear that the criminal justice system involves the operation of many micro processes taken in an opaque web in which law is neither majestically separate from social structures, conflicts, and inequalities, nor purified from the "ordinary meaning" of its terms. It is important to be aware that the experiences of mothers in the criminal justice and correctional systems are not identical. Mother is an intersectional identity and mothers who are financially poor, racialized, or Indigenous, often experience discriminatory treatment and higher incarceration rates than mothers who are white and middle class, in Canada as elsewhere.

Indirect formal governance

Formal regulation and governance through the law and public policy does not only prohibit: it also directs, facilitates, channels, and otherwise structures social life (Saunders and Bromwich). Governance is formally imposed upon mothers indirectly through formal discourses that do not just prohibit but also structure. The mundane formal texts that provide laws, rules, regulations, and processes of fiscal, tax, health, education, and other laws and policies have significant governmental effects on mothers. Ways in which maternity and parental leaves are regulated, pay and benefits, and status and stigma merit mention here because they are formal mechanisms by which mothers are regulated indirectly.

For example, the ways that zoning bylaws, licensing provisions, and human rights duties of accommodation intersect dictates in what spaces a mother can comfortably and legally breastfeed. This intersection of regulatory provisions both reflects and reinscribes widely held attitudes and assumptions about breastfeeding in a particular location: it can normalize, sanction, prohibit, stigmatize, or impose pressure towards breastfeeding (OHRC).

For further example, the ways in which fiscal policies and the relevant jurisdiction's tax and benefits systems deal with pregnancy, child-rearing, and periods spent outside of the paid workforce profoundly affect the material circumstances in which mothers live. Perhaps the most obvious fiscal policy that affects mothers' lives is maternity and parental leave entitlement. In Canada, for example, mothers are entitled to take 17 weeks off work in relation to pregnancy, and there is also an entitlement to 35 weeks parental leave that is in addition to the 17 weeks and can be taken by either parent, or split between the two (ESA). Through Canada's Employment Insurance system (EI), biological mothers, fathers, and adoptive parents, can also generally qualify for payment during the leave period. In contrast, only a few hours' journey away, in the United States, there is no entitlement to paid pregnancy or parental leave, and the mandated time for leave is only 12 weeks for biological mothers (FMLA). This difference in leave entitlements and benefits contributes to different expectations and divergent workplace cultures around the questions of what childcare arrangements, and plans for breast or bottle feeding, might be normally expected of a mother, as well as what might be economically viable for young families.

Similarly, health care legislation, including what are provided as benefits, what health care costs, and what gaps exist in the provision of health care and home care, can impose a care burden on mothers, who are widely assumed to be available to do the unpaid labour of caregiving for the ill and elderly. Mothers are often blamed for social ills and their children's mental health or obesity issues (Reimer and Sahagian). As Valverde has genealogized, making mothers responsible for the physical and metaphorical moral cleanliness not just of children but also of communities, has a long-standing history of being part of Canada's colonial project of nation-building (Valverde).

When something goes wrong in the lives of children and teens, it is very often the child's mother who is blamed for it (Reimer and Sahagian). Mothers are often blamed and shamed in a wide variety of ways, including through the operation of regulatory provisions such as education laws requiring children to attend school, and guidelines addressing matters as mundane as school lunches, for perceived deficiencies in their maternal practices. Mother are subjected to, but also actively resist, ideologies of mother blame by engaging in feminist mothering practices and by publicly challenging patriarchal discourses of "good motherhood" (Hughes-Miller et al.).

Economic inequality along the matrices of gender and race, and gaps or failures in regulation that do not compensate for, or address, the inequalities in the systems of capitalism, contribute to gendered violence, devalued care work, and lone parenting. Aging women tend disproportionately to live in poverty, and this includes many mothers: indeed, years out of the paid workforce while engaged in caregiving for young children can and does often adversely affect an aging mother's financial security.

The foregoing is not an exhaustive list but rather a smattering of illustrative examples that highlight how it is important to research how laws of expedience (or *mala prohibita*) (Saunders and Bromwich) intended for general application specifically, differently, and, uniquely impact mothers by reinforcing and reinscribing the assumed dimensions of, and possibilities for, what constitutes a *good mother* and what is involved in *good mothering*. While the obligation to mandatorily perform "good" motherhood is imposed on all mothers, it is more possible to attain for some than others. Women excluded from, unable to comply with, or resistant to, the stereotypical requirements of white, middle-class, appropriately feminine, self-abnegating motherhood have been found to be legally "unfit." Indigenous women, single mothers, and even working-class women have been excluded from the stereotype of the "good mother" and hegemonic understandings of motherhood (O'Reilly; Bassin) in ways that render the construct of the "unfit mother" problematic as always already constructed in discriminatory, exclusionary, and oppressive ways.

Controversies and debates: mothers as law makers, in law enforcement, and as lawyers

Patriarchal systems locate mothers in complex social locations where they are both powerful and powerless (Rich). While they have been disproportionately subordinated and subjugated relative to men, and to fathers, and socially marginalized in some ways relative to other women, mothers have always been social actors as well as subjects of social regulation. It is reductive to understand the mother role as produced entirely by oppressive forces; mothers are agentic social actors who make choices in difficult circumstances, and who are accorded power over, and responsibility for, their children in a variety of ways (Eldjupovic and Bromwich). In a variety of visible and obscured ways, mothers agentically participate in the production and enforcement of the discourses of formal governance, such as policy and law, by which mothers are, in turn, governed. As discussed later, mothers have always been involved as

regulators in informal capacities through their work in parenting and their agencies as advocates. In fields of endeavour involving the protection of and care for children, women can derive power and credibility from invoking their roles as mothers, either to individual children, or to the nation. To a statistically lesser extent, some mothers have also long been involved in official and paid roles in creating, enforcing, and administering public policy and formal governance through roles in politics, law, and the judiciary. Mothers have moved into official roles as paid regulators in larger numbers, but they have not yet attained equality as workers within those fields.

Historically, women's roles in producing and enforcing formal governance have been largely unpaid and informal, and in relation to fields pertaining to the nurturing and protection of children. The activism of mothers was historically largely obscured from the historical record because mothers acted primarily in unpaid capacities on a voluntary basis, on single issues and not in paid jobs as career politicians, lawyers, or judges. Although the level to which women participate in paid leadership roles in the legal profession, policy-making, public life, and the judiciary is changing, it has not yet fundamentally changed in principle. Larger numbers of women are in leadership roles in general, but the progress of mothers in particular to leadership roles in the professions and public life has largely stalled in North America.

Invoking the role of mother in formal governance, women gain authority and credibility in patriarchal systems when they speak from their "proper" place as mothers, not as advocates for themselves but in their role as mothers of children. Women have spoken with authority from their social location as "good and proper" (white, Christian, middle-class) mothers in formal and informal leadership roles in social reform movements, historically as today. For example, the temperance movement that successfully fought for alcohol prohibition in Canada as well as in the United States had strong leadership in "Women's Temperance Unions" (Sheehan) whose rhetoric frequently derived its persuasive force from the role of their woman members as mothers. Further, the advocacies of mothers acting explicitly in their capacity as such also contributed significantly to the ultimate repeal of alcohol prohibition both in Canada and the United States (Rose).

Mothers' active involvement with the temperance movement is part and parcel of their more general implication in twentieth-century nation-building movements towards social purity and white national strength (Valverde), as well as in the forging of the welfare state in the first half of

the twentieth century (Bock and Thane). It is intertwined with the mandatory role of white mothers as nation builders and primary culture bearers as nurturers of white children (Comacchio). Relatedly, middle-class white mothers were key figures in the "child savers" movement at the turn of the nineteenth to the twentieth century that led to the establishment of juvenile courts to transform the state to act in its *parens patriae* jurisdiction as "the great mother of all its children" (Clapp).

The roles mothers have taken in advocacy are not historically unproblematic. Many famous white, middle-class first-wave feminists at the turn of the twentieth century were not just associated with suffrage, temperance, and hygiene movements but also movements in furtherance of eugenics and forced sterilization of indigenous women, such as Canada's "famous five," as well as US first-wave feminist Margaret Sanger, whose work also had a troubling association with eugenics (Kome; Douglas).

It has historically been risky for mothers to engage publicly in processes of formal government, especially by engaging in activism. It is a cultural paradox that, while mothers are supposed to speak out to guide, socialize, and protect children, they are in another discursive sense also not supposed to, as women, publicly speak. Activism by racialized, Indigenous, or poor mothers, in particular, has historically been received differently by the cultural mainstream in North America than the activism of white, middle-class mothers.

Across racial and socioeconomic lines, mothers often receive criticism in popular texts if they spend too much time working, as politicians, lawyers, or activists, and not singly devoting themselves to care for their children. Public engagement, even in principle, contradicts with the assumed, traditional private role they have as caregivers for children. The discourse of "intensive mothering" demands their total self-abnegation in service of their children's care needs all of the time (O'Reilly). When mothers have spoken publicly or engaged in protests, they have often been criticized for harming their children, and have sometimes become the subjects of child protection proceedings, where their children are sought to be apprehended from them to protect them from the harms effected by their mothers' activism (Poe). Mothers also run the risk of criminalization and incarceration when they engage in civil disobedience. These risks are compounded where the mothers are activists on issues falling afield of the traditional sphere of mothers' expected expertise, as when they speak in relation to the environment, nuclear weapons, peace, or other issues not directly and only about children (Poe).

It remains the case that, while the majority of women in prisons are mothers, the majority of the lawmakers who craft the policies and laws that put them there, whether politicians, lawyers, or judges, are men. There are significant barriers presented by discourses of where mothers properly belong (Rich; O'Reilly), combined with mothers' disproportionate caregiving burdens that prevent them in many instances from participating in public office or sustaining legal careers (Bohn and Parmaksız). While the work and social role expectations involved in motherhood limit the time and ability of mothers to become involved in political life in many circumstances, mothers subjectively often report that the experience of motherhood "politicized them," providing an impetus for them to at least want to become politically active and involved in shaping public policy (Bohn and Parmaksız).

Since the Industrial Revolution, across Western countries in the developed North, mothers were consigned to live and labour in unpaid capacities in the private sphere. Participation of mothers in formal processes of governance and regulation was generally discouraged and remains rarer than participation for other persons. Until the late twentieth century, in Western democracies, women were neither lawmakers nor lawyers, except for a very small few. Indeed, women did not have the vote and could not even participate in selecting their formal governmental leaders until the early twentieth century.

However, mothers have participated in processes of formal governance in complex ways. It is not, in fact, true that mothers did not participate in the public sphere historically, despite their small numbers in the professions. They were present in informal ways, as volunteers, and advocates, daughters, and wives of leaders all along. For example, it was the advocacy of mothers that featured most prominently in the "temperance" movement that led to alcohol prohibition, and it was mothers who, through references to their status and roles as mothers, were at the forefront of the "child savers" movement that ushered in youth criminal justice regimes to soften the impact of criminal law on youths with age-appropriate modifications. Mothers have also been involved and have invoked their maternal status in claiming authority in speaking about the care for children.

The social location of motherhood confers some authority over certain social fields, and in particular those relating to children, while it has historically also implied the disqualification of even those mothers from speaking out on other subjects, such as economics, technology, and science – associating mothers with children and nature, and men and fathers with culture and science. Furthermore, other mothers have not been understood

generally in widely held assumptions to count as good and proper mothers: these other mothers include working-class women, racialized women, LGBT women, and more.

Mothers' relationships to government in the Foucauldian sense are complex and manifold. Mothering, understood as caregiving labour, has at its core a regulatory dimension as well as a supportive one. Mothering is double-edged as supportive and nurturing but also providing the epistemic violence (Spivak) through which the unruly bodies of children are shaped into civilized persons. Mothers are understood not just to meet their children's physical needs but also to be tasked with civilizing children. Mothers are held to account discursively, "blamed" for their children's issues from autism to schizophrenia to obesity. It is fundamentally in relation to this governmental role that it is justified for mothers to attract intense governmental scrutiny on their own: the reality that the ideology of "intensive mothering" subjects mothers to intense scrutiny is rationalized on the basis of the necessity of their behaviour to be closely circumscribed in regulating children.

Controversies, challenges, and directions for future research

It is an old adage that the hand that rocks the cradle rules the world. As is evident from the feminist research about intersections between mothers, motherhood, and formal governance, the saying is neither simplistically true nor false. More research is needed to make visible ways in which mothers have exerted in the past and continue to exert influence and negotiate power in constructing and maintaining systems of formal governance. Equally, research is also warranted that takes mothers seriously as subjects of formal regulation.

Given that the roles, status, and circumstances of mothers in contemporary Western societies are changing, while at the same time the law is constantly changing, it is tremendously important that intersectional and nuanced study of how mothers affect and are affected by formal discourses of regulation should be conducted on an ongoing basis. Intersectional analyses of how mothers are involved in constructing regulatory frameworks that examine particular cases are an area for further study in the law – criminalization at the intersection of indigenous heritage and maternality, in Canada, for example, or African American mothers. The potential for mothers to productively invoke their roles as mothers to gain credibility, and their

strategic mobilization of discourses, also needs further research. Advocates and legal scholars alike would do well to consider how strategic essentialism (Spivak) could be involved in the deployment of maternal identities and discourses to further progressive ends.

More scholarship needs to be produced that engages with debates around the roles of formal governmental discourses in the oppression of mothers and the social participation of mothers. Research and advocacy should engage questions of whether mothers should have particular or special rights in relation to the parenting of children. Should family law continue to be officially gender neutral in most jurisdictions? Should mothers receive different levels of maternity and parental benefits and leave entitlements than fathers? More scholarship should also consider whether contemporary societies are in a post-motherhood moment: Are we post-gender and post-feminism? Should we be crafting a parenting or care movement rather than a mother's movement now?

This Anthology

This anthology seeks to develop understandings of how mothers are formally governed and participate in that governance. It includes interdisciplinary studies of governmentality and law generally. This is an wide-ranging interdisciplinary anthology themed around how discourses of motherhood and those persons who are identified as mothers are regulated through formal governmental mechanisms including regulations, guidelines, rules, and laws. The chapters curated in this anthology consider ways in which those socially located as mothers participate in formal government, law, and regulation, in professional roles such as working as lawyers, police officers, and lawmakers, as well as ways in which mothers are constrained, and empowered through formal regulation.

Contributions included here are produced from within a wide range of disciplines and fields, including law, psychology, sociology, anthropology, women's and gender studies, cultural studies, literary studies, legal studies, and all social science and humanities. Creative and experiential narrative contributions are also included.

At the heart of the formal government of mothers is the traditional function of mothers in informal governance of children. Much formal regulation of mothers is undertaken with the rationale of ensuring that their mothering work is undertaken in ways that comply with widely accepted social norms.

More research should be conducted into the interplay between formal and informal discourses in the governance of mothers.

This anthology seeks to examine and theorize how mothers and mothering are represented in, and affected by, the recognized discourses of law and public policy involved in formal governance. One key theme threating through these chapters is the need to grapple with the ethics and epistemology involved in considering intersections between identity politics and motherhood (O'Reilly). Advocates and academics alike in these chapters consider how the identities and agencies of mothers can be deployed in ways that don't support implicit assertions that white, middle-class mothers are the only legitimate, or at least *more* legitimate, ones.

This introduction has discussed how mothers are governed formally by operation of the complex and murky interactions between law, society, and culture that together constitute intersecting formal and informal regulatory orders. It has looked at how the formal texts and social practices that comprise law, public policy, and governmental administration, management, and operations significantly impact and shape mothers' lives. It has explored how systems of law, regulatory measures, courses of action, and funding priorities concerning mothering and motherhood directly and indirectly shape and impact mothers' lives. Rather than understanding mothers as passive recipients, it has looked at ways in which mothers have been, and are, agentically involved in the development and enforcement of formal governance mechanisms affecting mothers.

As is made clear throughout this introduction, the discourses of law, policy, and formal regulation are embedded within society, meaning that there is no clear, bright line between formal and informal mechanisms of government. The construct of the "bad mother" or "unfit mother" is a persistent and pervasive discursive figure that remains present in the government of mothers and motherhood across Western democracies, informing the "ordinary" meaning of mother deployed in processes of sense-making undertaken by actors across bureaucratic systems, in public policy and law (Hughes-Miller et al.). Topics relating to discursive government of mothers are of crucial significance to understanding how formal governance actually works. Contemporary mothers are subjected to the rigorous scrutiny of the discourses of intensive motherhood (O'Reilly) across the field of social interaction. The operation of the processes and discourses of the formal regulatory apparatus – including public policy and law – is situated within the social and cultural life of a community, not majestically separated from it.

Accordingly, to move towards a more emancipatory and egalitarian regime of formal governance of mothers in any jurisdiction, law reform and (re)education of actors and officials in legal systems – including lawyers, police, social workers, and health care providers – is necessary. However, to change the ways in which mothers are governed by formal regulatory discourses of public policy and law, it is at least as important to engage with popular culture and the public at large through the deliberate construction of counter-discourses of equality in parenting and empowered mothering.

The Chapters

This anthology presents a range of diverse contributions that are thematically linked by their focus on how mothers are regulated by law and related forms of formal governance and also participate in processes of law and government. What follows is a brief summary of each chapter.

Afreen Abdul, in Ongoing Challenges of the Hidden Reality, discusses mothers who are asylum seekers, refugees, or immigrants fleeing war-torn regions in search of safety and a better future. These mothers, often pillars of strength for their families, face immense challenges in pursuing refuge.

Alisha Chohan, in Indigeneity, Motherhood, and Reconciliation in Canada explores traditional Indigenous matriarchal society and how colonization detrimentally abolished it in favor of the Western patriarchal structure. The author ties themes of Indigenous child-rearing practices and women's safety, through a historical context, to demonstrate the detrimental impact of the *Indian Act.* Additionally, evidence of active colonialistic hurdles embedded in the Canadian structures are highlighted to demonstrate unique challenges faced by Indigenous mothers and women. Chohan also discusses the *UNDA* legislation, its status and Canada's proposed framework for a potential reconciliation path forward with Indigenous peoples.

Neha Chugh, in Hot Dogs for Dinner - Reflections of a Child Protection Lawyer/Mom begins by exploring her internal struggles balancing motherhood and a full-time career in the practice of law. The author highlights her experience working with parents in the child protection law, who find themselves under the microscope of state surveillance. The systemic issues faced by parents in child protection proceedings bring their day-to-day decisions under the microscope of state agents. Women practicing law balance the demands of the profession with the demands of motherhood. Mothers practicing law face pressures to achieve in the workplace but to meet their children's needs as well.

Alice Diver, in Folkloric Finalities, looks at exclusions of oppositional mothers in adoption law and folk tales, analyses recent UK case law (Northern Ireland, England and Wales) involving maternal applications to challenge adoption orders or post-adoption contact bans. It argues that, at times, the jurisprudence echoes the warning messages of certain folk and fairy tales: there are similar episodes of shaming and stigma, often highly gendered and demonizing. Diver look at how the longer-term outcomes affect not just the exiled, erased mothers, but also impact upon their descendants and other relatives who might have hoped for some form of future reunion (or truth recovery). Deliberate silencing and exclusion are the hallmarks of the era of historic forced adoptions, leaving little room for the protection or preservation of maternal identities, given that these are forcibly 'relinquished' and extinguished alongside legal motherhood. And yet, reunions do still occur. They are sought out, despite the risks, both in fiction and reality, suggesting that a journey back towards a lost past might be possible, even in the face of difficulties and unanswerable questions. Ancestral origins do matter, as do justice, truth recovery, and redress.

Adrienne Jupiter, in Reimagining the Welfare of Children, exposes the systemic issues embedded in the United States child welfare system through a personal and scholarly lens. Adrienne Jupiter argues that the system's reactive approach causes significant trauma and disproportionately impacts families of color and those living in poverty. She examines the problematic history of the child welfare system and highlights how current policies like the Multiethnic Placement Act and the Adoption and Safe Families Act, perpetuate systemic racism. Through personal narrative and research, Jupiter critiques the criminalization of poverty within child welfare, pointing out that many parents are penalized for lacking resources. The author advocates for shifting resources from foster care to proactive, supportive services that help stabilize at-risk families.

Kelly Lauzon, in Motherhood and Wrongful Conviction, aims to examine the impacts that the law and the legal system have on an historically silenced group – wrongfully convicted mothers. There is no doubt that the law is coercive, and any interaction with the legal system can be traumatizing, but these effects are amplified for young mothers accused of the most insidious crimes. Through a series of interviews with five American women, Lauzon creates an opportunity to appreciate the complicated situation in which they were placed. These women had to navigate the penal system while trying to balance the demands of motherhood while also working to establish their innocence.

Sushree Routray and Rashmi Gaur, in Defying Normative Motherhood: The Rise of Representation of Hijra Motherhood, explore the historical and contemporary challenges faced by the Hijra community in India, with a focus on Hijra motherhood. Hijras, once respected, saw their social standing erode during British colonial rule, which imposed laws targeting non-normative gender identities. Colonial policies like Section 377 and the Criminal Tribes Act criminalized Hijras, stripping them of social legitimacy. The Hijra community, however, disrupts these traditional ideas by redefining family and kinship through chosen, non-biological relationships. Hijra households, led by elders referred to as 'gurus' or mothers, illustrate an alternative family structure that transcends biological ties, thus questioning rigid societal norms. A central theme in this study is "matricentric feminism" within the Hijra community, which emphasizes motherhood practices detached from biological connections. Hijra mothers foster nurturing environments that confront traditional ideals of sexuality, honour, and family. In recent years, India has taken steps toward recognizing transgender rights, especially regarding identity and family structure. However, the legal system remains resistant to non-traditional family models.

Josephine Savarese, in "So, f–ked up, man": Exploring Criminal Sanctioning as a Sidestep to Transformative Grief, Analyzing a Mother's Testimony in R v Goodwill (2023), explores whether a Canadian criminal investigation and prosecution that happened over several years following the sudden death of a three-and-a-half-month-old son, Keenan Spencer, served as a barrier to a family and mother's grieving process thereby serving to attenuate systemic inequity. This chapter cites Indigenous scholars who have highlighted ways intergenerational trauma compounds traumatic grief for families. Because Keenan was solely in his father's care, Catlin Goodwill, at relevant times, Catlin was identified as the main suspect.

Ronique Padda, in Navigating Through the American Immigration System: Motherhood in an Underfunded System and the Role of Asylum Attorneys, looks at how, as mothers seeking asylum in the United States adjust to their new environment while they seek work authorization and permanent status, they are faced with certain challenges while they balance their roles as mothers and immigrants in finding resources to provide for themselves and their families. This journey to receive their work permits and legal status might not be an easy one for them. Attorneys working with asylum-seeking clients are also presented with some challenges as they try to support their clients on this journey. Attorneys may face language barriers and lack of knowledge when it comes to all the resources available for the asylum-seeking mother.

Youstina Tawadrous, in the Mother-Child Program, critically examines the Canadian Mother-Child Program (MCP), an initiative aimed at supporting incarcerated mothers and their children within correctional facilities in Canada. The chapter highlights the importance of the landmark case, *Inglis v. British Columbia* (2013), as a foundation for advocating maternal rights within the correctional system. In *Inglis*, the court utilized Sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, which protect the rights to security of the person and equality. The court found that terminating the British Columbia Mother-Baby Program violated these rights by disregarding the psychological and developmental benefits of the child-mother bond during incarceration. This case underscores that child-mother bonds are protected under the Charter, recognizing their vital role in promoting both the rehabilitation of incarcerated mothers and the emotional well-being of their children. Concluding with recommendations, the chapter advocates the possibility of a restructured MCP with inclusive eligibility, institutional support improvements, and a robust research agenda. Such changes, aimed at embedding family unity in a correctional viewpoint, could transform the MCP into an effective rehabilitative program that addresses not only incarceration's immediate impact but also supports positive reintegration and reduces intergenerational cycles of incarceration.

Rebecca Jaremko Bromwich and Ella Kovacevic look at how mothers, and especially the Indigenous mothers who make up the majority of the population in the territory, experience governmentality in the context of gender-based violence in the northern Canadian territory of Nunavut.

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