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WELFARE LAW, WELFARE FRAUD, AND THE MORAL REGULATION OF THE 'NEVER DESERVING' POOR

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ABSTRACT

The dismantling and restructuring of Keynesian social security programmes have impacted disproportionately on women, especially lone parent mothers, and shifted public discourse and social images from welfare fraud to welfare as fraud, thereby linking poverty, welfare and crime. This article analyzes the current, inordinate focus on 'welfare cheats'. The criminalization of poverty raises theoretical and empirical questions related to regulation, control, and the relationship between them at particular historical moments. Moral regulation scholars working within post-structuralist and post-modern frameworks have developed an influential approach to these issues; however, we situate ourselves in a different stream of critical socio-legal studies that takes as its point of departure the efficacy, contradictions and inherently social nature of law in a given social formation. With reference to the historical treatment of poor women on welfare, we develop three themes in our critical review of the moral regulation concept: the conceptualization of welfare and welfare law, as illustrated by welfare fraud; the relationship between social and moral with respect to the role of law; and changing forms of the relationship between state and non-state institutions and agencies. We conclude with comments on the utility of a 'materialist' concept of moral regulation for feminist theorizing.

INTRODUCTION

The continuing offensive against welfare provides, perhaps, the single most general threat to Western women's interests at present - at least for those many women who are not wealthy, and who still take the major responsibility for caring work in the home. (Segal, 1999: 206-7)

. . . the statistics unequivocally demonstrate that both women and single mothers are disproportionately adversely affected by the definition of spouse

. . . although women accounted for only 54% of those receiving social assistance

and only 60% of single persons receiving social assistance, they accounted for nearly 90% whose benefits were terminated by the [new] definition of spouse . . .
(*Falkiner v Ontario* [2002]: 504, para. 77)

The attacks on the policies and practices of the Keynesian welfare state have resulted in wholesale dismantling and restructuring of social security programmes for the poor. These sweeping changes to social assistance, aptly characterized by some as a war on the poor, have a disproportionate impact on poor women, as even Canadian courts have begun to acknowledge (*Falkiner v Ontario*, 2002). Indeed, it has become axiomatic to observe, as Lynne Segal does above in relation to welfare, that welfare law is principally (and ideologically) concerned with the lives and issues of poor women, especially lone parent mothers.

In this article, we will identify and analyze the pride of place the focus on 'welfare cheats' occupies in the current attack on the poor. It is important to emphasize that this preoccupation with welfare 'fraud' is but the most visible form of assault. The attack on welfare in the province of Ontario over the last decade, for instance, included deep cuts to the level of welfare benefits (*Masse v Ontario*, [1996]; see also Moscovitch, 1997: 85), a broadening definition of 'spouse' (*Falkiner v Ontario*, 2002), restructuring of the legislation from 'welfare' to 'work',¹ mandatory drug testing,² the introduction of a 'quit/fire' regulation (which requires the cancellation or suspension of assistance to a recipient who resigns employment without just cause or is dismissed with cause),³ anonymous snitch lines, designed to encourage people to report suspected welfare abuse by their neighbours (Morrison and Pearce, 1995; Morrison, 1998: 32), and 'zero tolerance' in the form of permanent ineligibility imposed upon

anyone convicted of welfare fraud (Golding and Middleton, 1982; Evans and Swift, 2000; *Rogers v Sudbury* (2001: 5); *Broomer v Ontario* [2002]). In this process, the restructuring of welfare has shifted and been shifted by public discourse and social images (see Golding and Middleton, 1982; Evans and Swift, 2000): welfare fraud became welfare *as* fraud. Thus poverty, welfare and crime were linked.⁴ To be poor was to be culpable, or at least vulnerable to culpability.

Two Ontario women convicted of welfare fraud offer case studies of the culpable poor in this new era. Kimberly Rogers pleaded guilty to welfare fraud in the spring of 2001. Her fraud involved receiving a student loan and welfare assistance at the same time (previously but no longer permitted by Ontario's legislation).⁵ In light of the fact that she was pregnant, and had no prior criminal record, the judge sentenced her to a six month period of house arrest. However, as a result of the 'zero tolerance' policy celebrated by the Ontario government, which then stipulated three months, and later, permanent ineligibility of people convicted of welfare fraud, Ms Rogers had no source of income (MacKinnon and Lacey, 2001; Keck, 2002). Confined to her small apartment by virtue of the 'house arrest' condition of her sentence for welfare fraud, it took a court order directing that she receive interim assistance pending the hearing of her challenge to the constitutionality of the new ineligibility rules (*Rogers v Sudbury* (2001)). Even when her assistance (\$468 per month) was reinstated on an interim basis, her rent (\$450 per month) consumed the bulk of her monthly cheque. As a friend later observed: 'No one can stretch \$18 for a whole month' (MacKinnon and Lacey, 2001). Isolated, in her eighth month of pregnancy, with an uncertain future at best, and unable to leave her apartment, Ms Rogers died of a prescription drug overdose during a sweltering heat wave in mid-August

2001. The circumstances of Ms Rogers's death gave rise to a coroner's inquest in the fall of 2002. The coroner's jury made 14 recommendations for changes in government policies and practices, directed to no less than five provincial ministries; the first of which was that the zero tolerance lifetime ineligibility for social assistance as a result of welfare fraud be eliminated (Ontario, 2002).⁶

In 1994, Donna Bond, a single mother of two teenage children, had been charged with 'welfare fraud' to the amount of \$16,477.84 over a 16-month period - a bank account that had not been disclosed in her annual Update Report. At her trial, Ms Bond testified that she had saved all the money she had ever received from part-time employment, baby bonus, child tax credits, and income tax refunds (all of which she had disclosed in her annual reports to welfare). While she had initially planned to buy a car with this money, the serious health problems of her children made her realize that they 'will require financial assistance to deal with these problems in the years ahead' (*R. v Bond* [1994]: para. 8). She decided to set the money aside as a trust fund for the children. When the account was discovered (easily it seems), she said that she had 'honestly believed that she did not have to report the savings because they were for the children' (para. 13).

The trial judge admitted to a dilemma:

. . . I was very impressed by the sincerity and achievement of the accused and troubled by the paradox of criminalizing the actions of this woman who scrimped as a hedge against the future financial health needs of her children. If she had spent this money on drinking, or drugs, or in any other irresponsible way, there would be no basis for any criminal charge. A conviction seems to send the message it was wrong to be conscientious about the welfare of her children and

foolish to be frugal. (para. 14)

Troubled as he was, convict he did, neither the first nor last 'sympathetic' judge to enter a conviction for fraud against a welfare mother (Martin, 1992; Carruthers, 1995). While critics might regard this case as affording an instance in which reasonable doubt as to guilt ought to have existed, the trial judge took a different view of her culpability: '[H]er commendable frugality and her selfless motives for committing the offence are matters for consideration on sentencing' (*R. v Bond* [1994]: para. 14). Were this normatively perfect mother not convicted of welfare fraud, she might well have been recognized by a community organization, or a women's magazine, as 'Mother and Homemaker of the Year'.

In our view, the *Bond* and *Rogers* cases raise many theoretical and empirical questions related to regulation, law, morality and the relationship between them at particular historical moments. We rely on their cases to develop three themes in this article:

- the conceptualization of welfare and welfare law as illustrated by welfare fraud;
- the relationship between *social* and *moral* with respect to the role of law;
- changing forms (and continued relevance) of the state and its relationship with non-state institutions and agencies.

An increasingly prominent approach to these issues in critical socio-legal studies through the 1980s and 1990s was evident in the proliferating literature on

the arguably related concepts of 'moral regulation', 'risk', 'governance', and 'governmentality' generated by scholars working within post-structuralist and post-modern frameworks. We focus here primarily on moral regulation in the Canadian context. While the concept of moral regulation initially was developed by Marxist-influenced theorists (Hall, 1980; Corrigan and Sayer, 1981; 1985), a number of Canadian scholars have employed a (re)formed concept in their work which illustrates the decentring trend in theories of regulation and control (Valverde and Weir, 1988: 31-4; Valverde, 1991, 1998; Loo, 1992: 125-65; Strange and Loo, 1997; Little, 1998) that also characterizes contemporary theorizing about governance and governmentality (Dean, 1994, 1999; Stenson, 1999). The moral regulation literature in Canada is not confined within a particular discipline, but it does tend to be connected to interdisciplinary work that often has an historical focus (see Hunt, 1997, 1999; Strange and Loo, 1997; Campbell, 1999).

The strength of this scholarship is the light it sheds on non-state forces and discourses, as well as the important insight that the state does not hold a monopoly on 'social' and 'moral' initiatives. The criticism of blunt, overinclusive notions of 'law and state as social control' and of the excesses of economic determinism is also well taken. However, we also find echoes of the sociological, criminological, and (some) feminist literature on 'social control' in this work on moral regulation. Indeed, it seems to us that contemporary writers have used the concept of moral regulation to analyze many of the same issues that were of concern to social control scholars a century earlier (Chunn and Gavigan, 1988: 107-28): the relationship between state and civil society, public and private, formal and informal control, and the construction, control or

regulation of 'moralized' subjects, objects and projects (see Hunt, 1997: 275–301; 1999). Thus, while we share many of the same concerns as moral regulation scholars and have some sympathy for their projects and arguments, we nonetheless want to argue for a more fully social and materialized form of the concept of moral regulation. In short, we want to rematerialize the moral by situating moral regulation in relation to particular forms of social formation and within specific forms of state, law and social policy (Stenson and Watt, 1999; Clarke, 2000).

Rather than jettison the concepts of 'social' or 'control', we want to argue that 'moral regulation' need not be considered as an alternative or necessarily superior concept and that, therefore, sites and forms of regulation and control require different, not alternative, forms of analysis. So, while we agree that recourse to the language of 'control' or 'social control' too often obscures the complex and contradictory sources, contexts and objects encompassed, we are of the view that regulation neither supplants nor captures the field. Not every state action or law is an expression of 'social control' – but nor is it necessarily a form of regulation, moral or otherwise. To assume that moral regulation is inevitably more flexible or precise than social control is to replicate the theoretical error of over-inclusivity. Thus, despite the significance of nonstate actors and processes, it remains important to identify the links, forms and sites of state action and inaction. We want to distance our notion of moral regulation from one which suggests that the state is disappearing or ceasing to be relevant. In our view, the state never ceases to be a player, even when benched, ignored by some, or out-manoeuvred by others.

We are influenced here by a body of socio-legal scholarship that has undertaken and advanced this form of inquiry and analysis.⁷ We will illustrate our critical

engagement with the concept of moral regulation with reference to the historical treatment of poor women on welfare (see also Little, 1998). We focus in particular on the always precarious position of such women within the overarching (apparently anachronistic) category of the 'deserving poor', through the example of welfare legislation and policy, and the current preoccupation with welfare fraud. In our view, state provision of social assistance to the poor was neither principally nor incidentally an expression of benign state coercion or social control, although distinguished scholars in the field have worked within this framework (Piven and Cloward, 1971). Our understanding of the regulatory nature of welfare legislation, and its moral content, has been enhanced by moral regulation scholars (e.g. Little, 1998). But, as we will illustrate later, moral regulation offers a partial, perhaps historically specific, analysis of the operation of welfare law. Recent experience of welfare law reform and preoccupation with welfare fraud – this redefinition, restructuring, harassment and disentanglement, coupled with the ever present threat of criminal prosecution – suggests to us that the state and its coercive apparatus continue to play an important role, analysis of which is neglected at our peril.

The article is organized in five sections. We begin with a review of some of the moral regulation literature, devoting particular attention to Canadian contributions, and outline our conceptualization of the issues related to regulation. Next, we examine welfare law reform in the 1990s with an emphasis on the emergence of our specific exemplar of welfare fraud. In the following two sections, we revisit the concept of moral regulation and consider the (in)ability of recent forms of moral regulation discourse to explain the current state preoccupation with welfare fraud. We conclude with some comments on the

utility of a 'materialist' concept of moral regulation for feminist theorizing on socio-legal relations.

A GENEALOGY OF MORAL REGULATION AND ITS
(SOCIO-) LEGAL FORMS

In the last instance (as they say) it is the nature of the state which shapes the nature of crime control. A quite different theoretical agenda could also be constructed that does not give the state such a privileged position, that sees the real force of social control as lying outside the formal punitive system. (Cohen, 1985: 272)

Moral regulation has no agreed-upon meaning. Indeed, as Steve Tombs (2002) has observed recently in respect of forms of constraint of corporate behaviour, the 'disarmingly simple and often used term' 'regulation' covers myriad forms of actions, processes and actors, such that 'it is perhaps a less than useful term' (p. 113). While we want to hold onto 'regulation' as a legal form, we acknowledge that its pairing with 'moral' does not render its meaning any less opaque. Alan Hunt has similarly noted that the late twentieth-century turn to moral regulation in sociological and socio-legal literature 'has not been accompanied by any close attention to the concept "moral regulation" itself' (Hunt, 1997: 276; 1999: 7-8).

Nonetheless, one is hard-pressed to find any scholarship in the area that fails to acknowledge that the elaboration of a contemporary concept of moral regulation, whatever its theoretical antecedents and progenitors, owes much to the collaborative work of Philip Corrigan and Derek Sayer (1985). In *The Great Arch*:

English State Formation as Cultural Revolution they presented a close analysis of the particularity of state formation in England, and specifically, the 'cultural' project of English state formation:

. . . moral regulation: a project of normalizing, rendering natural, taken for granted, in a word 'obvious', what are in fact ontological and epistemological premises of a particular and historical form of social order. Moral regulation is coextensive with state formation, and state forms are always animated and legitimated by a particular moral ethos. (p. 4)

This concern with *forms* of social relations and state action or state formation may be found as well in their pioneering (if seemingly lesser known) contribution to Marxist theorizing on the rule of law and 'specifically legal forms of regulation' (1981: 30). They argued that 'moral topography' is integral to law - 'a mapping of the social world which normalises its preferred contours - and, equally suppresses or at best marginalises other ways of seeing and being' (1981: 33). But if this moral topography is integral to law, so too is law integral to morality:

For law is not merely the passive reflection of the moral and material framework which overarches it. There is a dialectic to be observed . . .

Law is absolutely central to this regulation . . . It is, in sum, the major means through which the boundaries of preferred moral classifications can be regulated: defined, emphasised, focused, nuanced, shifted. (1981: 40)

Some critics have chided Corrigan and Sayer for 'disabling' their analysis by their

ongoing commitment to the relevance of the state in moral regulation (Dean, 1994: 145–68; Valverde, 1994: 212). However, as Alan Hunt (1999) points out, since Corrigan and Sayer's immediate objective 'was precisely to provide an account of state-formation; it seems to be beside the point to criticise such a project for being state-centred' (p. 15). It is also clear that their work stands as an exemplar to those who would erect a narrow or crude version of Marxist theorizing in order to illustrate its inadequacy.

While Corrigan and Sayer placed the moral regulation project squarely within state actions and legal relations, one of the promises of less 'statecentred' scholars is the way in which moral regulation can render visible the fact that the state has not held a monopoly on 'moral' projects. The state must be decentred (Valverde, 1991), or its relationship with non-state agencies better appreciated (Valverde, 1995), or erased as a significant player altogether (Valverde, 1998). For Mariana Valverde (1994), the heart of moral regulation, or moral reform in a 'moral capitalist setting . . . is not so much to change behaviour as to generate certain ethical subjectivities that appear as inherently moral' (p. 216; see also Weir, 1986). The focus is less on the (material) consequences of regulation or reform than on the (discursive) contest. However, the concept of 'control' has not completely vanished, as the new interest in 'self control' and 'self regulation' might suggest (Valverde, 1998; Stenson, 1999). One might be forgiven for continuing to consider the 'echoes' of social control when 'agencies of moral regulation' are identified as 'schools, welfare agencies, charities' (Valverde, 1994: 215; see also Little, 1998).

But, as others have asked: 'Why moral?' (Dean, 1994: 147) (To which we may be seen to be adding: 'Why regulation?') What is meant by 'moral' and why is the

concept 'moral' employed in preference to 'social'? It is not a theoretical imperative, as Lorna Weir's (1986) early important work has demonstrated. The answer may derive in part from the distance sought to be established between an older, cruder, instrumentalist concept of social control and a more finely tuned, nuanced yet precise and specific concept of moral regulation (Valverde and Weir, 1988: 31-4; Hunt, 1997; 1999; Strange and Loo, 1997; Little, 1998; Campbell, 1999). Yet much of the literature seems more able to explain why regulation is preferred to control, leaving the inference that the meaning of moral is self-evident.

For Alan Hunt (1997), moral regulation facilitates a richer, more cogent analysis of social relations than is possible with the

more conventional category 'social control' which has the disadvantage of assuming a unitary and self-conscious project of some primary agent . . . that imposes itself on others . . . Moral regulation in contrast is more messy; it is never unitary, its agents vary widely, it never goes uncontested and its selfconsciousness is complex. (p. 277)

Margaret Little's (1998) illuminating historical study of the moral regulation of single mothers in Ontario owes an intellectual debt to moral regulation scholars who reject the image of regulator as 'powerful', in favour of 'the contestation of different definitions of morality and the alliances formed' (p. xix). Little is committed to appreciating the importance of 'resistance to change' as well as the 'cultural activities of the state and other social agencies' (p. xix). However, she suggests that the claims of moral regulation are modest:

. . . [M]oral regulation provides us with another lens through which to examine the complexities of welfare policy. This model cannot explain the conditions observed, but it can help to highlight relationships and regulations that many take for granted. (p. xix, emphasis in original)

But Dean's (1994) question still looms: 'Why moral?' (p. 147). Ultimately, Dean rejects the concept - in part because 'the adjective, moral, remains indeterminate . . . it delineates no clear domain that is (even relatively) autonomous from forms of political regulation and state power' (p. 147) - and he argues that 'governmentality' is less problematic and more useful as an analytic construct. For Hunt (1999), moral regulation is a useful concept, but for 'analytical purposes only' since there is 'no place where "the moral" rules alone or even predominates' (p. 8). As he conceptualizes it:

The moral dimension of regulation is not to be found in the intentions of the regulatory agents on the simple methodological grounds that we can have no sure access to intention, and no means of distinguishing motive from selfjustification. Rather, my definition of moral regulation is a process in which moral discourses, techniques and practices make up the primary field of contestation. (Hunt, 1997: 279)

We are mindful that for some scholars who have helped to develop moral regulation as an analytic frame, its appeal lies in the focus on non-state actors and processes it is seen to facilitate. Thus, the state is decentred from a ubiquitous 'pride of place' position in shaping and containing 'civil society'.⁸ While sympathetic to this 'decentring' emphasis, we want to argue for a renewed focus on social and state forces, and in particular the contradictions and contributions of forms of law and state to gendered and anti-racist class struggles in the realm of moral

regulation. In other words, moral regulation must be situated expressly within the context of capitalist class relations and struggles; not least of which, in the current context, is capital's (globalized) attack on the 'straw house' of the Keynesian welfare state. We want to reinsert and re-articulate the relationship between legal regulation and moral regulation without collapsing them into each other or the state, or rendering one or other invisible.

Our concern is that despite the richness, depth, and diversity of the scholarship reviewed earlier, the concept of moral regulation that emerges from it does not deliver the contestation, the messiness, the resistance that it promises. In our view, it continues to be important to attend to the different forms of regulation, the different sites, forms and levels of state and social policy and law. To illustrate our position, we draw on Stuart Hall's early work on law, state, and moral regulation; specifically, his analysis of the reformist 1960s' era of the 'legislation of consent' in Britain when laws relating to divorce, homosexuality, abortion, prostitution were liberalized (Hall, 1980). Hall's organizing question is (p. 2): 'What was it about the shifts in the modality of moral regulation which enabled this legislation, plausibly, to be described as "permissive"?'

Hall reminds us that in 'the 'legislation of consent' no single uncontradictory tendency is to be discovered' (p. 7). By way of illustration, Hall argues that the highly influential Report of the Wolfenden Committee on prostitution and homosexuality 'identified and separated more sharply two areas of legal and moral practice - those of sin and crime, of immorality and illegality' (p. 11). In so doing, Wolfenden created 'a firmer opposition between these two domains' and 'clearly staked out a new relation between the *two modes of moral regulation* -

the modalities of legal compulsion and of selfregulation' (p. 11-12, emphasis added). Wolfenden recommended decriminalization and '*privatisation of selective aspects of sexual conduct*' (p. 13, emphasis in original). Hall identifies the 'double taxonomy' of the Wolfenden recommendations: Towards stricter penalty and control, towards greater freedom and leniency (p. 14). Here then was the core of the tendency of the 1960s' permissive legislation: '*Increased regulation coupled with selective privatisation through contract or consent, both in a new disposition*' (p. 21, emphasis added), a 'more privatised and person-focused regulation, tacit rather than explicit, invisible rather than visible' (p. 21).

For us, Hall's questions, method of analysis, and insights continue to be cogent. In identifying the 'double taxonomy' of control and penalty and freedom and leniency, or simultaneous deregulation and increased regulation, Hall reminds us of the complexity of the unity of the 1960s' reforms. The state was pulled back and re-inserted in different ways in the same pieces of legislation; its invisibility in one area was reinforced by its visibility in the other. From our perspective, his insight that 'self-regulation' was inextricably related to increased 'public' regulation is important. The lines between unacceptable public and permissible private conduct were ever more sharply drawn. In this way, two modalities of moral regulation, legal compulsion and self-regulation, one neither displacing nor transcending the other, co-existed in a complex unity. Before applying this conceptualization of moral regulation to our exemplar of welfare fraud, we would first like to provide an overview of the always unstable terrain of Canadian welfare law and policy in the twilight years of the twentieth century, a period marked by the teeter tottering of the welfare state. In the next section we look at welfare law reform during the 1990s in order to consider the heightened

interest, indeed legal shifts, in the area of welfare fraud in Canada.

WELFARE REFORM IN THE 1990S

The new zero tolerance policy is the first of its kind in Canada, and a key step in Ontario's welfare reforms.⁹

Although governments of all political stripes (re)formed welfare policy and legislation during the 1990s (Moscovitch, 1997; Bashevkin, 2002), we use Ontario as our primary exemplar. Taking its cue from the Klein administration in Alberta (see Denis, 1995; Kline, 1997), the Harris government arguably was the most draconian among the Canadian provinces in effecting changes.¹⁰ Welfare, and in particular a vow to 'crackdown' on welfare 'fraud', were the centrepiece of the Ontario government's welfare policy (Ontario, 1999; 2000a). Indeed, one of the first things the Harris Tories did upon election in 1995 was to introduce a 22 percent cut to welfare rates and to redefine (i.e. broaden) the definition of spouse in welfare law in order to disentitle a broader range of previously entitled recipients (see Gavigan, 1999). Although all of Canada's welfare poor live on incomes that are thousands of dollars below the poverty line (National Council of Welfare, 2002; 2003), in post-1995 Tory Ontario, the welfare rate cut ensured that the 'poverty gap' widened even further (McMullin, Davies and Cassidy, 2002; National Council of Welfare, 2003: 66, f. 5. 2). The household income of a single employable recipient of social assistance in Ontario fell to 35 percent of the federal government's low income cut-off measure; the income of

a single parent with one child dropped to 58 percent of the poverty line (Gavigan, 1999: 212-13; National Council of Welfare, 2003: 28, t. 2. 1). An Ontario couple with two children on welfare had an income (\$18,400) that is 20 percent of the estimated average income of a four-person family in Ontario (\$90,606) (National Council of Welfare, 2003: 31, t. 3.1).

The discourse and politics of welfare fraud have obscured the imprecision of what is considered to be fraud, and by whom. In Harris Tory discourse, it came to encompass all forms of overpayments, whether resulting from administrative errors or not, including people in jail whose welfare should have been terminated upon incarceration, as well as formal fraud convictions – numerically insignificant as these continue to be. Indeed, the government's own 'Welfare Fraud Control Reports' tend to collapse categories, frequently failing to distinguish between benefit 'reduction' and 'termination', and the reasons therefore (Ontario, 2003). As the coroner who presided at the Kimberly Rogers's Inquest observed of the evidence that had been presented during the two months of hearings: 'Overpayments . . . may occur for a number of reasons, most of which are related to administrative items and the settlement of supplementary income received in previous periods; while overpayments are common, overpayments due to fraud are very uncommon' (Eden, 2003).

Crackdowns on welfare abuse during the 1970s and early 1980s (see Golding and Middleton, 1982; Rachert, 1990) were followed by the overhaul of welfare policies in most liberal democracies. In Ontario in 1988, the Social Assistance Review Committee (SARC) released *Transitions*, a 600-page report with 274 recommendations on Ontario's social assistance system (Ontario, 1988). The issues of 'system integrity' and 'welfare fraud' were dealt

with in seven pages, and yielded but two recommendations (p. 380). These recommendations were motivated not because the Committee was convinced that the system was being 'bled' by fraud, but in order to address and instil public confidence in the system (pp. 384-6):

We have no evidence to suggest that fraud in the social assistance system is greater than it is in the tax system or the unemployment insurance system. Nevertheless, because public confidence in the social assistance system depends in large part on the belief that the funds are being well spent and that abuse is being kept to a minimum, we accept that some of the measures adopted to control social assistance fraud may need to be more extensive than they are in other systems. (p. 384)

Significantly, however, the *Report* identified adequacy of benefits as the '*single most important weapon in the fight against fraud in the system*' (p. 384, emphasis added).

In a comprehensive response to the recommendations concerning 'system integrity', Dianne Martin (1992) criticized the Committee for abandoning its own guiding principles, in particular its commitment to the creation of a welfare regime based on dignity and autonomy of social assistance recipients. Noting the dearth of reliable data on the incidence of welfare fraud in Ontario, Martin suggested that the most reliable indicator (conviction rate) placed the incidence rate at less than 1 percent (p. 93). The disproportional criminalization and punitive treatment of women on welfare figured prominently among Martin's concerns, and even when judges appeared to be sympathetic, women were convicted and incarcerated (p. 91). The guiding sentencing principles, as Martin

noted (p. 66), stressed deterrence as 'the paramount consideration' even where the case was 'pitiful' (see also *R. v Thurrott* (1971); Wilkie, 1993; Carruthers, 1995).

The complexity of the rules and the reporting requirements facing welfare recipients has not diminished over the 15 years since the *Transitions Report* was released. On the contrary, as Ian Morrison (1995) has illustrated, the rules and reporting requirements have become more difficult and intrusive. As noted earlier, the previous legislation permitted a welfare recipient to receive social assistance as well as an income-based student loan in order to attend college or university. No longer. Now she runs the risk of a welfare fraud conviction (McKinnon and Lacey, 2001; Keck, 2002).

From a modest, almost insignificant, place in *Transitions*, the fight against welfare fraud emerged as a centrepiece of provincial welfare policy in Ontario, irrespective of governing political party (Moscovitch, 1997; Morrison, 1995; Little, 1998: 139–63). Far from being a minor residual concern triggered by a few 'cheats' (McKeever, 1999: 261–70), policies of 'Enhanced Verification' and the introduction of 'snitch lines', 'zero tolerance,' and 'permanent ineligibility' all illustrate the shift that has occurred. More intense measures were developed to ensure that a recipient is eligible, and the creation of the 'snitch hotline' was designed to encourage the anonymous reporting of suspected fraud and abuse by neighbours. Again, despite the modest results (Morrison and Pearce, 1995; Little, 1998; Ontario, 1999; 2000a; 2003; *Rogers v Sudbury* (2001)), the government celebrated this form of 'deputization' of its citizenry to inform on friends, neighbours and acquaintances. Far from instilling 'public confidence' in the social security system (Ontario, 1988), these

initiatives ensured that a lack of public confidence is maintained and encouraged, whilst now conveying the impression that fraud was rampant, and that every person on welfare needed to be watched and reported and tested.

It is important to note as well that unlike the situation in Britain (McKeever, 1999: 261–70), this shift in the direction of increased surveillance and criminalization of welfare recipients, notably women on welfare, illustrates that the (coercive form of) criminal law and (the regulatory form of) welfare law are inseparable. The *Criminal Code* continues to be used to prosecute welfare recipients where fraud is suspected, and even ‘sincere, devoted mothers’ like Donna Bond find themselves at risk of prosecution and conviction. For all the heightened intensity and investigation of welfare fraud, however, the convictions boasted by the Ontario government – 1123 in 1997–8, 747 in 1998–9, and 547 in 1999–2000 – amounted to no more than 1.36 percent of the total number of welfare recipients in the province based on Ontario welfare statistics (Ontario, 1999; 2000a, b); and less than 1 percent based on National Council of Welfare Statistics (2000).¹¹

WOMEN, WELFARE AND FRAUD: THE ‘NEVER DESERVING’ POOR

In using welfare law and, in particular, welfare fraud to interrogate the efficacy of (moral) regulation, it is important to be clear about what we are and are not saying. While we share the view that law is central (Corrigan and Sayer, 1981: 40), we are not asserting that the law is necessarily determinative of the nature of the relations that it defines, governs or regulates (Gavigan, 1986: 279–312). Nor are we denying the relevance of informal and non-legal practices,

and indeed non-state practices (assuming they can be identified). We are arguing against the 'expulsion of law' (Hunt, 1993) and the erasure of the state. Indeed, it is ironic that just as the regulatory state has been identified by the right as a problem because of its 'pervasive' and intrusive presence in everyday life and business transactions, the state has similarly been rolled back in the critical socio-legal scholarship we discussed earlier. We concur with those who continue to argue for the interconnectedness of the material, social and cultural and the need to look at redistribution as well as identity/self-formation (Collins, 1991; Fraser, 1997; Roberts, 1997; Boyd, 1999; Brenner, 2000; Razack, 2002).

We are influenced as well by Alan Hunt's (1993) 'relational theory of law' which 'does not artificially separate legal from other forms of social relations' (p. 225) and his important insight:

... relational theory facilitates the recognition and exploration of the degree and forms in which legal relations penetrate other forms of social relations . . . It also embraces the idea that the 'presence of law' within social relations is not just to be gauged by institutional intervention but also by the presence of legal concepts and ideas within types of social relations that appear to be free of law. (p. 225)

Of particular relevance for our purposes is Hunt's comment on the pervasive theme in governmentality literature that sites of power are dispersed:

In reorienting the focus of attention toward the plurality of power, and to the significance of local and capillary power there is an unwelcome, but avoidable tendency to *expel the state*. Without derogating from or evading the significance of the plurality of power it is essential to 'bring the state back in'. (pp. 312-13)

We are concerned that the neglect of law and state as social relations in some of the moral regulation scholarship reinforces the 'artificial separation' of legal relations from other social relations and thus risks rendering invisible what Richard Kinsey (1979) once characterized as the 'despotism of legality'. In theorizing welfare fraud, it seems clear that there have been important shifts in welfare policy which seem not to be captured by 'moral regulation' in its Foucauldian form. We want to argue that a significant ideological shift (evident in welfare-related practices) has occurred, and that it is impossible to de-centre the state and the heightened attention to welfare fraud during the 1990s.

In this discussion, we are not suggesting that the welfare reforms of the 1990s marked a complete departure from past practices. We see important historical continuities in welfare legislation and policy that need to be emphasized (Abramovitz, 1996; Little, 1998; Mosher, 2000). First, welfare policy has always been premised on the separation of the 'deserving' from the 'undeserving' poor. Second, the social support accorded to the deserving was, and continues to be, based on 'the principle of less eligibility' or the assumption that welfare recipients should not receive more money than the worst paid worker in the labour force. Third, the 'deserving' always have been at risk of falling into the ranks of the 'undeserving'; as Little (1998) well demonstrates, single mothers on social assistance have been and are subjected to intrusive and 'moral' surveillance of their homes, their cleanliness, their childrearing abilities, their personal lives, and so on (see also Buchanan, 1995: 33, 40). Fourth, criminal prosecutions for welfare fraud have always occurred (Rachert, 1990; Martin, 1992: 52-97; Evans and Swift, 2000).

What then made the 1990s different from earlier times? We see an important

ideological shift from welfare liberalism to neo-liberalism (see also Stenson, 1999). However, our analysis leads us to conclude that the shift is one in which a major state presence and resources are still required. On the one hand, the state is ideologically de-centred but no less present (Denis, 1995). The form of the state and its social policy has shifted; social programmes designed to ameliorate or redistribute have been eroded, laying bare a heightened state presence which condemns and punishes the poor. On the other hand, the effect of this ideological shift has been a huge expansion in the category of undeserving poor. Indeed, virtually no one is considered 'deserving'; even those who do receive social assistance are viewed as temporary recipients who must demonstrate their willingness to work for welfare and who ultimately will be employed as a result of skills and experience gained through workfare and other government-subsidised programmes. Thus, sole-parent mothers who historically were more likely to be deemed

'deserving' than were childless men and women are no longer so 'privileged' (Buchanan, 1995; Moscovitch, 1997; Little, 1998; Mortenson, 1999; Mosher, 2000; Swift and Birmingham, 2000; Bashevkin, 2002).

This redefinition of the 'undeserving poor' has required a massive redeployment but, arguably, not a reduction in the allocation of state resources to welfare. The downsizing of social assistance payments is accompanied by a concomitant increase in state-subsidised make-work and workfare programmes that ostensibly will (re)turn participants to the labour force, and a dramatic increase in the state-implemented technologies and programmes which

are aimed at ferreting out and punishing the 'undeserving' poor (Mortenson, 1999; Mosher, 2000; Swift and Birmingham, 2000). Indeed, the lifetime ban upon conviction for welfare fraud arguably ensures a lifetime of (secondary) punishment (without parole) and unameliorated poverty following upon such a conviction.

In sum, we want to emphasize that there are important differences between the past and the current context in which welfare and welfare fraud are being framed. We are witnessing a profound attack on the 'social', indeed the erosion of social responsibility, and in this attack, the authoritarian, neoliberal state is an important player. As we illustrate in the next section, despite the apparent transcendence of social relations and state forms (in favour of dispersed pluralities of power) - where, as Alan Hunt has argued (1997), the 'social' is replaced by the moral and the moral is a realm unto itself - moral regulation, whether in its emergence or its repudiation, must be understood in relation to state and social policy.

MORAL REGULATION RECAST

It is imperative to recognize that the increased emphasis on welfare and welfare fraud has occurred in the context of state (re)formation in liberal democracies. We concur with (moral regulation) scholars who argue that the success of the 'new right' in Ontario and elsewhere cannot be reduced to economics and globalization. Rather, restructuring and the decline of 'the social' must 'be understood in the context of a vast cultural offensive to transform

society' in which 'the ability to wield state power is essential . . .' (Denis, 1995: 373; see also Hall, 1988). As Denis (1995) argues: 'Far from losing its sovereignty, the state reasserts its power over the lives of citizens . . . It turns itself into the "authoritarian state," one of whose main characteristics is to usher in a new, more intense regime of moral regulation . . .' (p. 373).

In concluding our discussion of welfare fraud we want to return to Hall's (1980) argument that the 'legislation of consent' was shot through with contradictory tendencies making the 'unity' of the various statutes involved 'a necessarily complex one' (p. 7). We can identify contradictory tendencies related to welfare reform in Ontario and elsewhere during the 1980s and 1990s that restructured the relation between the two modes of moral regulation – self-regulation and compulsion. Specifically, we can identify a 'double taxonomy' (p. 14) in the welfare reforms towards both expanded privatization and increased regulation. On the one hand, we see the intensified individualization of poverty through the emphasis on personal responsibility, the imposition of self-reliance and the relegation of former welfare recipients to the market (see also Cossman, 2002). The slight and grudging acknowledgement of social responsibility for the poor that marked the Keynesian state has been rescinded. Now, as in the nineteenth century, poverty is a problem of individuals in civil society and the solution to poverty is an individualized one to be found principally in the labour market and/or marriage.¹²

This intensified individualization of poverty has major implications for lone-parent women. Historically, the 'deserving' mother on welfare may have been 'hapless' (Evans and Swift, 2000) and 'pitied, but not entitled' (Gordon, 1994), but she also was a public servant of sorts so long as she was considered to be

(morally) fit. During the 1990s, Ontario and other governments began divesting themselves of public servants, including 'welfare moms', and placed the emphasis on creating choices to work and become self-sufficient. Now, work is strictly confined to the (private) market and mother work no longer receives even the tacit recognition that it was accorded by Keynesian states. The promotion of individual responsibility and self-reliance together with the equation of work with paid, private-sector employment is very clear in the statement of key principles underpinning Ontario's (re)formed welfare system: 'Doing nothing on welfare is no longer an option . . . Participation [in Ontario Works] is mandatory for all able-bodied people, including sole-support parents with school-aged children' (Ontario, 2000b: 1; see also Lalonde, 1997).

Defining work as paid employment means that women who do unpaid work can no longer be dependent on the state, but they can work for welfare or be dependent on an individually responsible, self-reliant, employed spouse or same sex partner. The Harris government underscored this point by refining and expanding the 'spouse in the house' rule on the ground that 'no one deserves higher benefits just because they are not married'.¹³ Thus, while 'welfare dependency' has become a form of personality disorder signifying inadequacy and 'diagnosed more frequently in females' (Fraser and Gordon, 1994: 326), the 'approved' alternative, or perhaps supplement, to the market for sole-parent women is marriage and the family (Murray, 1990). As Segal (1999) points out: 'This is why single mothers can be demonized if they *don't* work, even while married women with young children can be demonized if they *do*' (p. 206, emphasis in original).

On the other hand, concomitant with the emphasis on the intensified

individualization of poverty is the intensified state regulation and surveillance of dwindling numbers of public welfare recipients, now re-defined as individuals who need 'temporary financial assistance . . . while they satisfy obligations to becoming and staying employed' (Ontario Works Act, 1997, s. 2). Since welfare 'is temporary, not permanent' (s. 2), the state must ensure that public money is not being wasted on 'fraudsters'. The Ontario legislation invokes the neo-liberal language of self-reliance through employment, temporary financial assistance, efficient delivery and accountability to taxpayers.¹⁴ However, as noted earlier, Ontario poured extensive resources into the establishment of an elaborate and constantly expanding system of surveillance aimed at detecting and preventing fraud and misuse of the social assistance system. At the same time as massive cuts to welfare rates were implemented, the government allocated considerable money for special staff with expanded powers to investigate welfare fraud: There were 300 such investigators in 1998-9 and the government was providing 'additional funding for up to 100 more staff to do this work' (Ontario, 2000b). Additional government resources were used to create and maintain the Welfare Fraud Hotline and a province-wide Welfare Fraud Control Database, and to prosecute alleged 'fraudsters'. Clearly, the state is not reluctant to spend public money if the funding is spent on policing welfare recipients as opposed to providing for them.

Of course, if we move beyond what government authorities themselves say, it becomes clear that the moralization and criminalization of the poor in general and 'welfare moms' in particular are far from being a seamless process. Contradictions are evident both among those who apply welfare law and policy and among those who are the targets of moralization. Judicial decision-making,

for instance, is not all of a piece in cases involving mothers charged with welfare fraud. Some of the criminal cases where women were convicted of welfare fraud for 'spouse in the house' and hence not living as a single person, do illustrate the neo-liberal ideological shift from bad mothers to bad choices (*R. v Sim* (1980); *R. v Jantunen* [1994]; *R. v Slaght* [1995]; *R. v Plemel* [1995]). But not every woman charged with welfare fraud is convicted, or if convicted, sent to jail. Some judges go to lengths to ensure this. Donna Bond received a conditional discharge, 50 hours of community service and six months probation.¹⁵ In another Ontario case, Trainor J. refused to convict a battered woman for welfare fraud (*R. v Lalonde* (1995); see also Carruthers, 1995). Moreover, in *Lalonde*, the welfare authorities had acquiesced to the man's presence in the home and only charged her when the man 'self-reported' his presence. Finally, following an inquest into the house arrest death of Kimberly Rogers, a coroner's jury in Sudbury made a number of recommendations, including that the zero tolerance lifetime ineligibility be eliminated and that the provincial government should assess the adequacy of welfare rates.¹⁶

Accounts of 'welfare mothers' also reveal diversity in practices among financial aid and frontline workers (Mortenson, 1999). Some workers are empathetic and supportive; others are punitive and controlling of their 'clients'. Likewise, the poor, including 'welfare mothers', are far from constituting a homogeneous category (Gavigan, 1999: 213–18; Swift and Birmingham, 2000). While welfare recipients arguably have a common class position, the ways in which they acquire that class position are diverse and mediated by other social relations of gender, race, sexual orientation, and (dis)ability, that in turn, influence the ways and extent to which mothers on welfare, for instance, are

active agents in shaping these relations. Many women live in constant fear of the scrutiny that may result in the loss of welfare assistance for not reporting income, having partners stay overnight, or being reported for child abuse and losing their children (Mortenson, 1999: 122–3; *Falkiner v Ontario* (2002): 515, paras 103, 104). As a result, they engage in continual ‘self-censorship’ of their activities (Little, 1998: 180). Others resist or challenge current welfare law and policy through the establishment and participation in informal support networks of ‘welfare moms’ and/or anti-poverty agencies and organizations (Buchanan, 1995; Little, 1998; Mortenson, 1999). Interview studies also reveal ideological contradictions among ‘welfare mothers’. A few espouse the social Darwinism of neo-liberal law and policy. They see themselves as short-term, ‘deserving’ welfare recipients who through workfare programmes and/or their own hard work will become ‘contributing’ members of society again (Mortenson, 1999). Some also feel resentful of and more ‘deserving’ than other mothers on welfare whom they feel are ‘faring better in the distribution of scarce resources, including jobs’ (Swift and Birmingham, 2000: 94–5). In contrast, others strongly reject the neo-liberal thrust of current welfare legislation and policy, equating workfare programmes and the rationales for them as government propaganda:

... I went to one of these ... workfare programs, and it was unbelievably stupid
... You have to be gung ho about making nothing and not getting any benefits or security, is basically what they’re telling you in so many words. And then they’re doing all these self-esteem boosting exercises with you, so that you’re just *really* gung ho about fucking working for nothing. It’s ridiculous ... The pay is \$5 a day and you have to work 40 hours a week for \$5 a day ... It’s a cheap labour strategy.
... (Mortenson, 1999: 66, emphasis in original)

Although the scope of this article precludes detailed discussion, we want to emphasize that the regulation/deregulation contradiction in the area of welfare legislation and policy reforms aimed at the poor also should be viewed in the context of government actions related to the welfare of the affluent and the regulation of capital. Increased criminalization and punishment of welfare fraud have occurred simultaneously with the deregulation and 'disappearance of corporate crime' (Snider, 1999; see also Pearce and Tombs, 1998: 567-75; Glasbeek, 2002; Tombs, 2002). Massive welfare cuts targeting poor people are implemented at the same time as huge corporate tax cuts which, together with direct fiscal subsidies, arguably are forms of social welfare for the rich (Young, 2000; Abramovitz, 2001). The deregulation and *de facto* decriminalization of corporate wrongdoing benefit a minority of (primarily) affluent white men while the criminalization of poverty and the intensified prosecution of welfare fraud punish the poor disproportionately (see Beckett and Western, 2001).

And, although state law has never been used effectively against corporate crime, we agree with Snider (1999) that the disappearance of corporate crime matters:

. . . abandoning state sanctions has far-reaching symbolic and practical consequences. State laws are public statements that convey important public messages about the obligations of the employer classes . . . The situation is paradoxical indeed: while crimes of the powerful were never effectively sanctioned by state law, such laws are nonetheless essential to the operation of democratic societies. (p. 205)

The concomitant deregulation of corporate crime and increased punitiveness toward welfare fraud (and 'street crime' more generally), suggest that in an

authoritarian form of liberal democratic state, government interventionism is re-directed, not eliminated (Hall, 1988; Denis, 1995: 368). State withdrawal from Keynesian social programmes and the economy occurs in tandem with government activism around issues such as capital punishment and youth crime (Denis, 1995: 369; Hermer and Mosher, 2002). In our conclusion, we consider the implications of this shift in the focus of state interventionism for the regulation of mothers on welfare.

CONCLUSION

In our view, there are some clear historical continuities (as well as differences) between social control and moral regulation as analytic constructs that warrant further study. As we argued earlier, moral regulation became an influential concept in non-Marxist analyses of power, regulation and control in the context of the neo-liberal state of the late twentieth century when the apparent triumph of privatization, globalization, and unfettered (indeed unregulated) transnational capital seemed to symbolize the decline of 'the social' and the nation-state itself. The more recent literature on moral regulation tends to focus primarily on 'self-control' and 'self-formation' which are thereby divorced from 'a contemplation of the state' (Cohen, 1985: 5) and from a consideration of the political and economic issues of redistribution (Fraser, 1997; Segal, 1999). In some contemporary moral regulation scholarship, 'poverty' is a discursive construct which displaces the class analysis that characterized the Marxian-informed (historical), socio-legal literature from the 1970s and early 1980s (Hay et al., 1975; Thompson, 1977; Hall et al., 1978; Fine et al., 1979; Corrigan and Sayer,

1981; Fine, 1984).

In the contemporary context, much moral regulation literature has argued for a position that 'privileges' non-state sites; a position which is seen to offer an antidote to both 'right-wing', neo-liberal theory and an 'economistic', state-focussed neo-Marxist perspective. Frequently, however, the latter is represented as a crude version of instrumentalist neo-Marxism that arguably owes more to the 'repressive' concept of social control than to Marx. As Garland (1997) puts it: '. . . that brand of Marxist theory was always decidedly unsociological, and it can hardly be said to exhaust the analytical range of sociological work' (p. 205). Contemporary 'post-Marxist' scholars have aimed to follow another analytical path. Their writings echo Foucault on the dispersed nature of power and the productive versus repressive aspects of control/regulation. Yet, like their social control predecessors, they often end up looking at controllers/regulators, frequently in 'non-state' sites. On this point, we again find one of Garland's (1997) comments on the governmentality literature to be equally applicable to some of the writing on moral regulation:

It is precisely because the authorities' analysis can be incorrect . . . that one wants to generate alternative accounts. Moreover, these alternative analytical accounts are crucial if one wants to explain not just the nature of programmes but also the impact that they have in the fields that they govern. (p. 201)

Can a 'materialist' concept of moral regulation have any utility for feminist theorizing? In our view, the concept has analytic utility as long as we continue to attend to the location of moral regulation in social policy and forms of law and state, and maintain an emphasis on the contradictions, social

antagonisms and class relations in a given social formation. The hard lives of poor women and their children impel us to resist any form of analysis that is also not attentive to the jagged edges of coercive laws that condemn them to the new ranks of the never deserving poor.

NOTES

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1. General Welfare Assistance Act, R. S. O. 1990, c. G.6, as rep. by Social Assistance Reform Act, 1997, S. O. 1997, c. 25 enacting Ontario Works Act, 1997, S. O. 1997, c. 25, s. 1 and Ontario Disability Support Program Act, 1997, S. O. c. 25, s. 2. The purpose of the Ontario Works legislation is to establish a programme that, as expressed in s. 1:
 - (a) Recognizes individual responsibility and promotes self reliance through employment;
 - (b) Provides temporary financial assistance to those most in need while they satisfy obligations to become and stay employed;
 - (c) Effectively serves people needing assistance; and
 - (d) Is accountable to the taxpayers of Ontario.
2. Ontario Works Act, 1997, O. Reg. 134/98 (amended to O. Reg. 197/02), Reg. 29 (1.5) and (1.6).
3. Ontario Works Act, 1997, O. Reg. 134/98, Reg. 33.
4. See Hermer and Mosher (2002) for commentary on Ontario's Safe Streets Act, 1999, S. O. 1999, c. 8. This legislation (more aptly, the Mean Streets Act) renders illegal the street activity of 'squeegee kids' and panhandlers.
5. Ontario Works Act, 1997, O. Reg. 134/98, Reg. 9 (a) and (b), provide that no single person who is in full-time attendance at a post-secondary educational institution is eligible for assistance if the person is in receipt of a student loan or is ineligible for a student loan because of parental income.
6. On 2 October 2003, the Ontario Tories were defeated by the Liberal Party in the provincial election. On 17 December 2003, the Hon. Sandra Pupatello, the new Minister of Community and Social Services, characterized the Tory government as having treated people on welfare as 'a typical punching bag' and she expressed the new government's commitment to a 'series of reforms' so that 'the system actually works for people' including an increase in welfare rates. The Minister also acknowledged the Government's obligation to respond to the recommendations of the Kimberly Rogers Inquest recommendations (Ontario, Legislative Assembly of Ontario, First Session, 38th Parliament, Official Debates (*Hansard*) No. 17A Wednesday 17 December 2003 at 868). On 9 January 2004, the Minister announced that the government would repeal the lifetime ban for those convicted of welfare fraud. However, the Minister also restated the Government's commitment to 'no tolerance' for welfare fraud. The permanent ineligibility sections of the Regulations were repealed by O. Reg. 456/03 made under the Ontario Works Act 1997. See also, Galloway (2004: A9). In our view, as significant as the repeal of the lifetime ban is, it is equally important to note that Kimberly Rogers would still find herself liable to a conviction for welfare fraud, and if serving a sentence of house arrest, the amount of social assistance would still leave her only \$18 a month to live on after her rent was paid. It needs to be recalled that when she died whilst serving her sentence of house arrest, Ms Rogers's welfare benefits had been reinstated by court order; it simply was not enough for her to live on, and the conditions of house arrest limited her access to other resources and sources of support.
7. For a political economy approach to these issues, see Fudge and Cossman (2002).
8. See, however, Glasbeek (1998; 2003) whose study of the Toronto Women's Court is attentive both to the question of moral regulation and to the role of and relationship between the state and social actors.
9. Ontario Progressive Conservative government policy statement, 18 January 2000.
10. See *Masse v Ontario* [1996]; *Rogers v Sudbury* (2001); *Broomer v Ontario*

[2002]. The more recent initiatives of the Campbell provincial government in British Columbia challenge and may surpass the dubious record of the Harris Tories, see 'B. C. Throne Speech outlines massive change' (Matas, 2002: A 15).

11. For instance, the most recent figures available from the provincial Ministry of Community, Family and Children's Services, indicate that criminal convictions for welfare fraud have been in steady decline since 1997-8, falling to 393 convictions in 2001-2 (Ontario, 2003: t. 1).

With respect to the zero tolerance lifetime ban introduced on 1 April 2000, The Income Security Advocacy Centre reported that a total of 106 individuals were permanently ineligible to receive financial assistance due to welfare fraud for offences committed between 1 April 2000 and 27 November 2002.
12. This is illustrated no less clearly than by the repeal of the General Welfare Act in Ontario, and the introduction in its place of Ontario Works legislation. General Welfare Assistance Act, R. S. O. 1990, c. G.6, as rep. by Social Assistance Reform Act, 1997, S.O. 1997, c. 25 enacting Ontario Works Act, 1997, S. O. 1997, c. 25, s. 1 [OWA] and Ontario Disability Support Program Act, 1997, S. O. c. 25, s. 2 [ODSPA].
13. The Ontario Court of Appeal struck down this expanded definition of spouse for 'its differential treatment of sole support mothers on the combined grounds of sex, marital status and receipt of social assistance, which discriminates against them contrary to s. 15 of the Charter' (*Falkiner v Ontario* (2002): 515 para. 105). It is significant to note one is deemed to be a spouse after three months' cohabitation; this is a much shorter time period of cohabitation (approximately 2 years and 9 months shorter) than is required under Ontario's provincial family law legislation before spousal support obligations and entitlements are triggered.
14. See Ontario Works Act, 1997, s. 1 (a), (b), (c) and (d).
15. Sentencing took place on 19 September 1994. *R. v Bond* [1994], certificate of conviction (on file with the authors).
16. Recommendations 1 and 4 of the 'Verdict of Coroner's Jury into the Death of Kimberly Ann Rogers,' released on 19 December 2002. The Coroner's Inquest, which lasted two months, involved eight parties with Standing, all represented by counsel. The Jury heard from 41 witnesses, and returned its Verdict and Recommendations on 19 December 2002. The Jury heard that of the 5000 or so welfare recipients in Kimberly Rogers's home community of Sudbury, there were at most one or two convictions for welfare fraud annually. Evidence before the jury showed that 'the Crown and the Courts were unaware that upon conviction the accused would be subject to a suspension of benefits'. Recommendation 14 called for ongoing professional training of criminal justice personnel in this regard. The 14 recommendations form part of a letter dated 17 January 2003 sent by the presiding Coroner, Dr. David S. Eden to the Chief Coroner of Ontario (on file with the authors).

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