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Risky relationships: examining the gendered architecture of risk-based penalty

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SUMMARY *Although there is an extensive scholarship on risk, the role of gender in shaping risk and the gendered effects of risk governance remain understudied. As this paper will show, recognizing the situated nature of risk and its gendered interpretations is critical to address the disjuncture between theories of risk and how it is organized and practiced in local institutional (penal) contexts. Specifically, this talk addresses the following questions: How are “risky subjectivities” conceptualized and acted upon? How risk is differentially gendered? How do diverse penal logics converge to produce new targets and strategies of risk management? I use one component of the correctional classification process — the assessment of the dynamic risk domain “marital/family” relations — to demonstrate how gender organizes institutional interpretations of risk and its management. Although my work in progress examines how risk and relationships are differently constructed for men (e.g., for men intimate relationships are often stability factors but for women the same relationship can escalate risk), here I focus on women.*

KEYWORDS *Risk, gender, punishment.*

RÉSUMÉ *Alors même qu’il existe de nombreuses études sur le risque, le rôle du genre dans la modulation du risque et sa gouvernance demeurent sous étudiés. Pour comprendre la fracture entre la théorie d’une part, et l’organisation et la mise en œuvre du risque en contexte pénal d’autre part, il est essentiel, ainsi que ce texte va le montrer, de reconnaître la nature locale et localisée de la notion de risque ainsi que les*

interprétations de genre qui font intrinsèquement partie de ce concept. Notre propos porte plus particulièrement sur les questions suivantes : comment les « subjectivités du risque » sont-elles conceptualisées et pratiquées ? Comment le concept de risque est-il différencié selon le genre ? Comment différentes logiques pénales concourent-elles à produire de nouvelles cibles et de nouvelles stratégies de gestion du risque ? Pour démontrer comment la notion de genre organise les interprétations institutionnelles du risque et sa gestion, nous allons utiliser un des éléments du processus de classification correctionnelle : l'évaluation du risque dynamique dans le domaine des relations familiales ou conjugales. Bien que notre ébauche analyse plus particulièrement comment risque et relations personnelles sont construites différemment pour les hommes (par exemple pour les hommes les relations interpersonnelles sont souvent considérées comme des facteurs de stabilité alors que pour les femmes les mêmes relations sont perçues comme des facteurs d'augmentation du risque), nous nous concentrons ici sur les femmes.

MOTS CLÉS *Risque, genre, sanction pénale.*

RESUMEN *Aunque es amplia la investigación en materia de riesgo, no se ha estudiado lo suficiente el papel del género en la configuración del riesgo ni los efectos con influencia de género en la gestión del mismo. El presente documento muestra que el reconocimiento de la naturaleza localizada del riesgo y sus interpretaciones con carga de género son esenciales para ocuparse de la desconexión entre las teorías del riesgo y la forma en que éstas se organizan y ponen en práctica en el contexto de las instituciones locales (penales). Esta ponencia se ocupa, en particular, de las siguientes cuestiones: ¿Cómo se conceptualizan las “personalidades de riesgo” y qué se hace al respecto? ¿De qué forma el riesgo difiere por género? ¿De qué manera las diversas lógicas penales convergen para generar nuevas metas y estrategias de gestión de riesgo? En el trabajo se emplea un componente del proceso de clasificación correccional, la evaluación del riesgo dinámico de las relaciones “maritales/familiares,” para demostrar la forma en que el género influye en las interpretaciones institucionales del riesgo y su gestión. Aunque mi investigación en curso analiza la forma en que el riesgo y las relaciones se construyen de modo diferenciado para hombres (por ejemplo para los hombres las relaciones íntimas son muchas veces factores de estabilidad, mientras que para las mujeres la misma relación puede aumentar el riesgo), en este documento me centro en las mujeres.*

PALABRAS CLAVE *Riesgo, género, sanción penal.*

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Introduction

Risk/need approaches have assumed a new level of complexity and prominence in penal theory and practice. Although there is an extensive scholarship on risk, the role of gender in shaping risk and the gendered effects of risk governance remain understudied. Risk is a fluid, flexible concept that can assume multiple and contradictory meanings contingent upon its context (Hannah-Moffat and O'Malley 2007). Relatively little attention has been paid, however, to how risk operates in specific institutional contexts. As I will show, recognizing the situated nature of risk and its gendered interpretations is critical in order to address the disjuncture between theories of risk and how it is organized and practiced in local institutional contexts. Specifically, this talk addresses the following questions:

- ❖ How is risk differentially gendered?
- ❖ How are “risky subjectivities” conceptualized and acted upon?
- ❖ How do diverse penal logics converge to produce new targets and strategies of risk management?

I argue that penal professionals play an important role in defining the architecture of risk: that is, how risk is understood and then acted on within institutional settings. Focusing on two penal ideologies that inform the practice of risk in such contexts — dynamic risk and gender responsivityⁱ — I show how gendered and racialized understandings of risk give practical meaning to its abstract categories. Many feminists and advocates would reject the combination of risk and gender responsivity principles, in part, because they begin from quite different assumptions about agency, structure, gender, and oppression. Nevertheless, policymakers and practitioners merge these principles in their working ideologies and together they play an important role in defining the governance of criminalized women and their families. In this talk I demonstrate how these ideologies are combined to facilitate new forms of governing through relationships by positioning female offenders' intimate and maternal relations as “risky.” I show how these constructions of risk are then used to justify interventions that target women's individual deficiencies.

My observations about the institutionalization of risk have been assembled from my analysis of the following data: 482 federal male and female parole files; 52 interviews with practitioners and the developers of risk tools; and risk instruments, methods, manuals, and policy. My focus

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here is on the risk assessment practices used in prison classification and treatment. This type of risk assessment stresses “dynamic risk factors,” also known as “criminogenic need factors.” These factors are a subset of offender “needs” that, when changed, are associated with shifts in the probability of recidivism. I use one component of the correctional classification process – the assessment of the dynamic risk domain “marital/family” relations – to demonstrate how gender organizes institutional interpretations of risk and its management. Although my work in progress examines how risk and relationships are differently constructed for men (e.g., for men intimate relationships are often stability factors but for women the same relationship can escalate risk), here I focus on women.

Identifying dynamic risk/criminogenic need in the Canadian context

Internationally, the emphasis on risk/need/responsivity (RNR) has reshaped dominant strategies of offender management over the past 15 years (Maurutto and Hannah-Moffat 2005). This holds true for Canada. In 1994, the Correctional Service of Canada (CSC) formalized the use of structured risk/needs assessments with the introduction of the Offender Intake Assessment (OIA). The OIA has two central components: static risk assessment and dynamic risk (criminogenic needs) assessment. Static factors include age, sex, criminal history, sentence type, severity of conviction(s), and victim characteristics. These are important in the assessment of “criminal risk,” but are less useful to correctional treatment providers because they are fixed. Of greater interest is the analysis of dynamic risk, which entails a detailed evaluation of an offender’s background, personal characteristics, interpersonal relationships, situational determinants, and environmental conditions. Typically, the dynamic, or criminogenic, needs assessment targets seven “domain areas:”

1. marital/family;
2. employment;
3. associates and social interaction;
4. substance abuse;
5. community functioning;
6. attitude; and
7. personal and emotional concerns.

The outcome of the OIA process is a hierarchical rating of risk/needs areas and a series of corresponding recommendations for correctional

intervention. Using the OIA, needs are not necessarily linked to a prisoner's perception of what he or she requires, but are constructed in terms of risk reduction and "intervenability." An intervenable need is statistically correlated with recidivism and is defined through the availability of resources and structural arrangements that would allow for intervention leading to its possible resolution (Hannah-Moffat 2007; 2004). The reduction of need levels is paramount to the management of risk and prisoners' progress is measured by their ability to adequately address identified risk/need areas. Thus, at the level of daily operations, understandings of risk and need are inextricably bound and connected to program prescriptions. In practice, this narrow construction of risk/need is applied to the assessment of female offenders' marital/family relations. Often this leads to the construction of these women's relationships as "risky." Although I focus here on the marital/family domain, and in particular on parenting, the same process could be demonstrated through the analysis of associates or intimate relationships. Focusing on parenting is particularly revealing since the OIA places great emphasis women's parental responsibilities.

Assembling criminogenic relationships: assessing the marital/family domain

Operational manuals for the risk tools used in offender classification outline a series of normative questions designed to determine if marital/family relationships are a problem (i.e., criminogenic). Although the nature and type of questions varies across tools, they are all designed to gather information about an offender's relationships for practitioners to use when assessing their risk and treatment needs. Risk tools routinely include a range of questions about partners, parenting, and formative family relationships. With regard to parenting, the OIA asks whether the offender:

- ❖ can handle parental responsibilities;
- ❖ controls the child's behaviour appropriately;
- ❖ supervises the child properly;
- ❖ participates in programs/activities with the children;
- ❖ understands child development;
- ❖ has been arrested for child abuse/incest; and
- ❖ perceives self as able to control the child's behaviour.

In addition to these questions, the OIA contains supplementary intake assessment guidelines for women only, which instruct assessors to “record any problem related to the offender’s children.” For example, for the domain “community functioning,” assessment scripts used in some jurisdictions ask the following (selected from over 300 similar questions) about parenting capacity and maternal abilities:

- ❖ How did she learn to be a mother?
- ❖ What would her family and friends say about her as a mother?
- ❖ What would her children say about her as a mother?
- ❖ Who is caring for the children?

Answers to such questions establish whether the dynamic risk category “marital/family” is a problem and rank risk factors along with other identified factors. Not surprisingly, approximately 80% of women are identified as having high risk/need levels in the marital/family domain. Although these relationships are intuitively important, the empirical evidence in support of their significance is ambiguous (for a more detailed discussion of the research see Hannah-Moffat 2007). As I will show next, the criminogenic character of parenting and relationships is intensified by feminist-inspired policies that, ironically, are designed to empower and liberate women.

Gendering risk

Feminist researchers have argued for the inclusion of gender-specific criteria in risk assessment -however, the empirical data on how gender matters is inconclusive and poorly theorized. Nevertheless, this data is routinely used in assessment practices. Feminist research suggests that relevant risk factors for women include marital status, suicide attempts, family structure of the childhood home, child abuse, depression, substance abuse, single parenting, reliance on public assistance, dysfunctional relationships and prison homosexual relationships. Internationally, feminist correctional researchers are currently grappling with the “technical” empirical importance of gender in the assessment of dynamic risk and correctional programming. For example, a series of quantitative studiesⁱⁱ currently underway aims to deliberately gender interpretations of risk through the production of gender-specific risk assessments and gender-responsive programming. The researchers envision that such assessments will eventually replace the generic forms of risk/need assessment currently used in most institutions. However, these studies do not interrogate the conceptualization of risk and gender.

Accompanying the rise of risk-based penalty is gender-responsive penalty, which begins with the premise that relationships are essential to women's lives. Advocates for gender responsiveness maintain that "when the concept of relationship is incorporated into policies, practices and programs the effectiveness of the system is enhanced (Bloom et al. 2003:53)." Relational theory provides a foundation for such a premise. According to relational theorists, connections with others "are so crucial that many of the psychological problems of women can be traced back to disconnections or violations within relationships, whether in families, with personal acquaintances, or in a society at large (ibid: 55)." Since women are thought to be motivated by relational concerns, it is argued that "effective" gender-responsive correctional interventions must centre on women's relationships (ibid: 5).

In an effort to be more gender responsive, Canadian penal policy – as well as training materials and publications distributed by the (American) National Institute for Corrections (NIC) – emphasize the feminist literature on relational theory. As a result, women's relationships are elevated in gender responsive risk/need discourses. References to the significance of women's relationships are evident throughout Canada's new 2004 *Correctional Program Strategy* and international literatures on gender-responsive corrections. In each case, particular attention is paid to the parenting relationship as a target for risk and intervention.

Increasingly, parental status is used to regulate women, promote prosocial values, and motivate participation in programs. A recent US report on gender responsive program development draws on empirical evidence to suggest that:

... the mother-child relationship may hold significant potential for community reintegration. Incarcerated women tend to experience a sense of isolation and abandonment while in prison because of their inability to keep their families together. [...] Recognizing the centrality of women's roles as mothers provides an opportunity for the criminal justice, medical, mental health, legal and social service agencies to develop this role as an integral part of the program and treatment interventions for the female offender population. (Bloom, Owen, and Covington 2003:57)

The NIC report on gender responsiveness also notes that "... because most female offenders are mothers, visits with children can motivate them to change their behaviour (Bloom, Owen and Covington 2003:29)." In this

statement, children are centrally positioned in the regulation of women. Although it is important to recognize the significance of maternal and intimate relationships, on a practical level it is also critical to consider how an emphasis on such relationships is conflated with broader concerns about risk. The trend toward governing women's risk through their maternal and intimate relationships raises three primary concerns that I address in the remainder of this paper: (1) the ascendancy of motherhood; (2) risk and the next generation; and (3) governing through relationships. Throughout, I argue that punishment has expanded to include the mending of families through the "responsibilization" of mothers (Hannah-Moffat 2007).

The ascendancy of motherhood: parenting interventions

Women are positioned as embedded in the lives of their children, thereby legitimatizing parenting intervention. Parenting programs have multiple functions, the most basic of which is to teach women "how to parent;" but they are also designed to target risk. Parenting programs scrutinize women's primary relationships and evaluate them against normative feminine ideals of motherhood, domesticity, and intimacy in order to interpret risk and a woman's capacity to self govern. It is difficult to contest parenting programs, especially since they claim to address incarcerated women's self-reported needs — including recognition of their motherhood status. Parenting programs, which facilitate the correctional goal of family reunification, clearly acknowledge this gendered "pain of imprisonment (Hannah-Moffat 2007: 238)." Yet, the reality of many incarcerated women's lives significantly departs from normative scripts of domesticity, "civility," and the matrix of behaviours deemed to constitute good mothering. Criminalized women do not fit hetero-normative tropes of middle class motherhood, domesticity, or decency.

Cycles of poverty, violence, substance abuse, and criminalization frame the histories of imprisoned women and their relationships. Many criminalized women have worked in the sex trade and developed additions to drugs and/or alcohol. Addicted mothers are culturally denounced, criminalized, and ostracized. They are characterized as irresponsible, hedonistic and selfish. Pregnant addicts are particularly vulnerable and often demonized for exposing the children to the horrors of addiction and risk of physical and/or mental disabilities. In some jurisdictions pregnant addicts are criminalized for in utero child abuse. As mothers, all criminalized women are expected to adhere to normative

expectations of prudence and self-sacrifice. Maternal ideals position hedonistic pleasure as secondary to children's health and happiness. Assessments and interventions that target women's parenting comprise a gendered strategy of risk governance in which domesticity and motherhood are central in the detection, prevention, and management of risk (Hannah-Moffat 2007).

Through the emphasis on relationships and parenting, motherhood is tacitly accepted as the naturally desired and ultimate goal of all "normal" women, as is the desire to improve and be a good mother. Incarcerated women are pressured to resume mothering with an expectation that this role will result in a lowered risk of recidivism. The unfavourable conditions in which many of these women are compelled to parent are overlooked. In policy narratives, women are typically characterized as experiencing grief and guilt about the separation from their children while imprisoned and their desire to be mothers and resume the role of mothering is naturalized. On some occasions women actively choose to sever relationships with their children. Narratives from these women reveal that histories of drug use, incarceration, and separation from their children result in feelings of apathy toward their children and their mothering roles (Geiger and Fischer 2003: 511). This reality is typically silenced and women expressing such indifference are often pathologized as "bad or neglectful mothers" who resist heteronormative femininities. At the very least, a woman's expressed desire to sever her maternal bonds often escalates institutional perceptions of her risk. Ironically, in the process of institutionalizing risk, the range of women's feelings and contexts of maternal relationships with their children are rarely articulated.

Women's resistance and gender deviance is not easily accommodated in penal logics that emphasize positive stable relationships. An objective of relational-based programming is to teach women how to overcome their relationship failings through the creation of stable, secure family structures, and positive, mutually reinforcing relationships. These goals evoke normative ideals of healthy, economically secure families and happy monogamous heterosexual relationships. The norm for many incarcerated women prior to conviction and upon release, however, is unsupported single parenting. Despite the constraints inherent in these women's lives, a general expectation is that mothers create conditions of safety and provide for basic necessities; their ability to do so affects perceptions of risk. If a woman is seen as unstable, immature, or deficient in the skills needed for economic self-sufficiency, she remains a risk to herself, her family, and her community. Even more

troubling is that risk practices typically characterized these problems as evidence of individual failings.

Risk and the next generation

In risk-informed gender responsive regimes, women are responsabilized for the risks of both partners and children. The risk that a female offender's child will become involved in crime is often of concern. Children of women offenders are characterized as vulnerable and at greater risk of problems. Parenting is tied to their future risk:

... parenting deficits put children at extremely high risk for continuing the violence cycle and becoming wards of the state themselves [...] *targeting parenting among women prisoners thus appears critical for reducing the risk to their offspring* thereby also saving considerable resources in the future (emphasis added, Green et al. 2005:147).

The emphasis on parental responsibility for modeling prosocial attitudes and crime prevention extends a woman's responsibility as risk manager beyond herself to her children and her family. In the case of Aboriginal women, this responsabilization is extended to her community. Incarcerated women must unconditionally assume responsibility for a host of structural impediments to crime free life, social and economic marginalization, and criminalization.

For Aboriginal women and other racialized groups, hegemonic ideologies of motherhood, womanhood, and family operate to impose dominant white, western cultural values (Kline 1995). In addition to efforts to gender women's penalty, steps are being taken to ensure that punishment is culturally sensitive. This suggests that the mobilization of motherhood is racialized. In fact, CSC policy narratives on families include a separate definition of the "family" for Aboriginal people. Correctional narratives routinely document the generational impact of colonization, drug and alcohol abuse, foster care, and residential schools on Aboriginal communities. This history contributes to the view that Aboriginal women typically come from "dysfunctional families" and thus have more acute parenting skill deficits. Not surprisingly, risk assessments conclude that Aboriginal women have a high degree of need in the marital/family domain.

Perhaps more interesting than these predictable results, however, is how risk is framed within this domain. In addition to examining the needs (dynamic risk) of individual Aboriginal women, correctional research advocates attentiveness to the “needs of the family.” Aboriginal families are differentiated from the families of non-Aboriginal prisoners and seen as requiring family counseling, financial support, assistance with child care, and in maintaining contact with incarcerated family members. The governance of risk in this context is holistic and racialized. While many non-minority families have similar needs, they are not similarly positioned as requiring such intervention, highlighting how risk is differentially constituted for racialized populations and how race reciprocally affects gender *and* risk.

Governing through relationships

The emphasis on women’s relationships, family, and maternal responsibilities in modern penality is not new. It has a long tradition in social and penal programming and in law. What is new and different here is the connection of the moral, domestic, and maternal responsibility of women to risk and a reconfigured “feminist” emphasis on relationships. Punishment and risk are to be situated within a broader field of gendered and racialized social relations. Yet few scholars sufficiently articulate the gendered nature of punishment (Britton 2005), and still fewer are attentive to how local practices “gender risk.”

The analysis of the institutionalization of risk presented in this talk suggests that risk varies in accordance with the gendered logic and influence of institutions. Moreover, it demonstrates that institutional risk practices actively produce gendered penal subjects and operate as gendering strategies that produce gendered subjectivities. Feminist critiques of gender neutrality produce new processes for understanding risk -in this case, the combined emphasis on gender responsibility and risk-based offender management enables new (and problematic) ways of thinking about women’s relationships, agency, dependency, and responsibility.

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ⁱ The term “gender responsive” refers to “progressive” penal strategies that try to create “an environment ...that reflects an understanding of the realities of women’s lives (Bloom and Covington 2003).

ⁱⁱ The literature on women and correctional classification almost uniformly notes that generic risk tools tend to over-classify women. A host of methodological concerns about risk tools are being debated in the technical literature on classification. The issues raised in this literature fall into four broad categories: debates about the validity and reliability of risk instruments; consideration of litigation on the basis of discrimination; attempts to identify gender specific risk factors and/or develop gender specific tools; and finally, rejections of risk-based approaches to correctional management.