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The Electronic “Scarlet Letter”: Criminal Backgrounding and a Perpetual Spoiled Identity

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Abstract

Crimes are multifaceted events that are not adequately explained with basic descriptors, yet a considerable amount of significance is afforded to relatively few simplistic labels that make up the contemporary “scarlet letter.” Today's criminal records create a lifetime of stigmatization for a person. These public records employ a limited range of information. By acknowledging the deleterious effects of even one documented criminal event on an individual's self-concept and status in society, we cannot avoid being faced with a serious moral dilemma

in light of society's prevalent reliance upon electronic criminal records. The electronic brand carried for life poses great challenges to offender rehabilitation and reintegration.

INTRODUCTION

A criminal record is today's "scarlet letter" (Hawthorne, 1892). The electronic criminal record is both a chronic and debilitating badge of shame that plagues exconvicts and exoffenders for the rest of their lives. Acknowledging that there are certain criminal acts that warrant lifetime consequences, the majority of exoffenders are being punished perpetually due to the electronic scarlet letter for a host of lesser offenses. Criminal records now affect the lives of millions of citizens who are being denied jobs, education, housing, insurance, and so on, predicated upon a one-dimensional, pervasive, and enduring electronic label (Pogorzelski et al., 2005).

The electronic "labeling" of Americans is not limited to the criminal justice system. One national task force report identified over a dozen different sources of information that was being gleaned for the "overall collection, maintenance, retrieval, and use of data about a person's background" (SEARCH, 2005, p. 4). The aforementioned article, however, primarily examines the effect of electronic labeling on exconvicts and other criminal offenders. Mitigating the long-term effects of these records by creating time limits, using explanatory attachments regarding offense characteristics, and instituting federally-backed probationary programs to support employers in hiring exoffenders can bolster reintegration efforts for the future.

In 2008, there were approximately 2.3 million prisoners held in American prisons and jails, as well as an additional 7.1 million persons who were under parole or probation supervision; over one half million prisoners were released back into the community; over 2 million new probation entries and exits took place; and over 14 million citizens were arrested for a crime in 2007 (U.S. Department of Justice, 2008). The United States now incarcerates more of its citizens than any other country in the world (The Pew Center on the States, 2008). In fact, it is estimated that the proportion of males for whom a criminal record check would generate a "hit" could be as high as 25% of the entire U.S. male workforce (Freeman, 2008, p. 409).

The co-authors of this article have incorporated personal experiences of the criminal justice system, including arrests, convictions, probation, incarceration, parole, and the ensuing frustration with the reality of blocked opportunities. One author was recently employed as the administrative director of an outpatient substance abuse and mental health agency that routinely served individuals who were: (a) charged with crimes, (b) convicted of crimes, (c) released from prison and on federal or state supervision, (d) under pretrial supervision (both state and federal), or (e) serving terms of probation. Almost without exception, those individuals reported significant negative experiences surrounding the far-reaching effects of criminal records. The remaining authors are university professors who have endured the incarceration experience and carry the scarring label of "excon."

Our research is predicated upon theoretical constructs discussed later in this article, tenets which have been espoused for centuries by philosophers and social scientists. Our primary data suggest that the negative effect of deviant labeling, which most often results in a "spoiled identity" (R. Jones, 2003), has been greatly exacerbated by contemporary overreliance upon electronic criminal records. It is also our opinion that an ethnographic perspective is a valuable adjunct to the field of criminology; as one criminologist suggests, "While incarcerated I had the opportunity to analyze prison culture from the perspectives of participant and observer" (Murphy, 2003, p. 248).

ELECTRONIC SCARLET LETTER: A MODERN SYMBOL OF A SPOILED IDENTITY

The criminal justice system is now more than ever becoming a defining force that affects millions of people's lives, many of whom are already disadvantaged and sorely lacking in both human and social capital. Evidence

from a number of countries strongly indicates that a significant number of the male population has a criminal record (one fourth to one half), and the potential for widespread discrimination, as well as the obvious human rights concerns, could have a widespread impact on our society (Lam & Harcourt, 2003, p. 238). Why are modern societies, especially the United States, producing criminals at such an alarming rate? Are American youth more criminally minded than are the youth in other countries?

We are permanently labeling the majority of these individuals as criminals for the rest of their lives at a rate heretofore unsurpassed in modern history. We are bestowing symbolic brands of deviance upon millions of people—brands that are unquestioned statements of fact in the eyes of most American citizens (Tannenbaum, 1938; Becker, 1963; Goffman, 1963; Lemert, 1972). It is clear that our country's interests would be well-served by not only examining the impact of arrest, conviction, and/or imprisonment itself on these individuals, but also by critically evaluating the key role that modern electronic criminal records play in the continued deprivation of basic opportunities. Also impacted are crucial reintegration domains such as housing, family support, social involvement, political involvement, education, and meaningful labor market participation.

Many citizens will experience the collateral consequences of criminal justice system involvement for years—most likely for the rest of their lives. With little attention paid to the nature of their offense (or offenses) and the circumstances thereof, they will be “tagged” (Tannenbaum, 1938) and categorized as criminals by an electronic scarlet letter (or stigma) that can be as enduring as physical brands of the past. Internet-driven access to unprecedented stores of electronic information, which includes criminal history, is here to stay. As one Harvard economist acknowledges, “The flow of cheap information about past criminal behavior is not a genie that can readily be put back in Aladdin's lamp” (Freeman, 2008, p. 408).

Credit scores are used to establish creditworthiness, and a low credit score implies something is probably amiss, but rarely explains why (such as personal hardships or other extenuating circumstances). There is simply a score. In exactly the same manner, electronic criminal records simply document an occurrence resulting from a person's involvement with the criminal justice system. Most criminal records obtained from the Internet—even the basic contents of a National Crime Information Center official criminal history check—will typically note only the following elements: arrest; whether or not the charges are dismissed; the outcome (guilty or not guilty); and if a sentence is imposed, the length of the term of probation or imprisonment and any restitution ordered by the court. Given the limited scope of such reports, individual circumstances cannot be explained. For example, larceny can be motivated by hunger or greed; murder can result from jealous rage, self-defense, vengeance, or a simple brawl.

The electronic scarlet letter confers a stigmatizing identity upon the bearer and renders him or her forever suspect by others. It tells others that not only did this person probably do something wrong, there is most likely something wrong with this person (Becker, 1963). A criminal record creates a social response that is almost always negative. It is a symbolic “badge of shame,” conveying the message that this person should not be trusted, is somehow flawed or bad, and should be viewed with suspicion at the very least. Today's electronic criminal records are both efficient and effective in transmitting this symbolic message to others in society. The electronic scarlet letter is not only today's symbol of deviance, but also a widely recognized sign of questionable moral character.

The same criminal history is used by prisons in the classification of prisoners. Richards and Ross wrote (2003):

In the United States massive numbers of people are incarcerated on a daily basis. And there is a belief, sometimes unstated, that better classification procedures will to a greater or lesser extent minimize our problems with incarceration; at the very least, it may save the taxpayer the increased costs of housing prisoners in more restrictive settings. Nevertheless, as long as classification of prisoners is based entirely on out-dated

measures of individual behavior (criminal offense, institutional conduct, gang affiliation, without references to the bigger structural issues (poverty, racial discrimination, drug war) that have created the boom in prison population, or prison programming that could lower the rate of disciplinary reports and predictable parole failure, very little will change.

Criminal records, presentence investigative reports, and institutional records are used to classify and assign prisoners to prisons with maximum-, medium-, or minimum-security levels. Again, records of previous behavior are used to predict future behavior, assuming that a man or woman has no social agency, no opportunity to live beyond the label.

In effect, the branding process begins in court, continues in jail or prison, and culminates in a public record available to anybody on the Internet. Electronic scarlet letters have become the modern version of branding, greatly aided by modern-day computers that can store and disseminate a person's entire historical profile just for the asking at a scope far beyond anything Tannenbaum, Becker, or Lemert would have expected.

LABELING AND SPOILED IDENTITY: A BRIEF HISTORY

The process of labeling a person as deviant was first addressed by George Herbert Mead in the early 1900s when he examined the criminal justice system from a social reactionist perspective (1918), and shortly thereafter by Tannenbaum (1938), who described the deviant labeling phenomenon as “tagging,” (the outcome of society's reaction to deviant behavior), which then evokes in the deviant a refusal to submit to society members' “dramatization of evil” (1938). Once a person was labeled as a criminal, this label sent a message to others that this person was no longer an “insider,” but an “outsider,” who was to be cut off from the lawful world (Mead, 1918; Becker, 1963). This process led to the permanent stigmatization of a proclaimed deviant, and created, both externally and internally, a sudden shift and reorientation towards a spoiled identity (Goffman, 1963; R. Jones, 2003). Labeling perspectives emphasize the importance of the development of a deviant identity, which can block a labeled deviant's access to conventional arenas of society (Becker, 1963; Lemert, 1972; Link, 1982; Matseuda, 1992; Sampson & Laub, 1997). Furthermore, society can formalize this type of social stigmatization into law by implementing many civil disenfranchisements against the record-bearer, such as: the right to vote or hold public office, ineligibility for certain housing and public assistance programs, and denial of licensure for many professions (Pogorzelski et al., 2005).

The labeling process, as related to criminal deviance, quite often produces what Goffman (1963) referred to as a spoiled identity; it forms a permanent master status (Lofland, 1969) whereby an individual becomes strongly discredited, primarily by society's reaction to the deviation that the label implies. It is a “challenge to one's humanity ... the person is devalued, spoiled, or flawed in the eyes of others” (Dovidio, Major, & Crocker, 2003, p. 1). Goffman identified three different varieties of stigmatizing conditions: physical deformities; blemishes of individual character; and differences based on race, sex, religion, or nation (Goffman, 1963). Significant to this article are the blemishes of individual character. While acknowledging that some stigmatized individuals actually thrive in spite of their stigma (Goffman, 1963; Dovidio et al., 2003), it is the criminal label in particular that calls into question a person's moral character, and contributes most to the notion of a spoiled identity. Criminal records are most effective in conveying this morally-laden symbol to the rest of society.

Early labeling theories generated a fair amount of disagreement regarding their vagueness, lack of empirical evidence, and seeming dismissal of a criminal's deterministic propensity for committing criminal acts. These criticisms were initially supported by various research studies (Bernburg & Krohn, 2003; Gove, 1975). Gove disputed some of the claims of labeling theorists with empirical research that proved many people become deviant without ever having been labeled deviant, and that the “behavior or condition of the person is the critical factor in causing someone to be labeled deviant” (1975, p. 295). However, recent works attempt to

identify actual social processes that translate deviant labeling into a deviant career based on Lemert's (1972) notion of "secondary deviance" (Bernburg & Krohn, 2003; Sampson & Laub, 1997), and seem to indicate that the criticisms of labeling theories might have been unfounded.

Durkheim (see Durkheim in Simpson, 1963) wrote that the deviant labeling process is necessary for defining moral boundaries and reaffirming moral order: the bad defines the good, and the good use the bad as scapegoats while touting their moral authority. Punishment inevitably befalls lawbreakers as they suffer the consequences of both formal (criminal justice system), and informal (suspicion, rejection) social reactions to their behavior (Lemert, 1972).

THE USE AND OVERUSE OF ELECTRONIC CRIMINAL HISTORY DATA

The dissemination and use of electronic criminal records has become entrenched in American society. The U.S. Bureau of Justice Statistics initiated the SEARCH report to study what they termed the "criminal backgrounding of America" through the commercial sale of criminal justice information. The report stated that criminal backgrounding has become "a necessary, even if not always welcome, rite of passage for almost every adult American" (SEARCH, 2005, pp. 1, 2). The report spelled out over a dozen recommendations, focusing primarily on a stated goal of public safety, with little or no attention paid to the fact that criminal offenders might have difficulty passing their own respective rites of passage.

An example of a common trend among states in recent years (Peterson, 2001) illustrates the availability of criminal records over the Internet. "Public safety" has become the overriding fallback position. It is a term routinely invoked to justify institutional discrimination of criminal offenders, in much the same way that "national security" is employed. As one convict criminologist recounts, safety and security are used as a rationalization for absurd and illogical "security" measures in prison, such as the routine shackling of a quadriplegic prisoner (Murphy, 2003).

The mark of a criminal record strongly contributes to blocked opportunities among exconvicts and other stigmatized offenders (Grogger, 1995; Pager, 2003; Kurleychek, Brame, & Bushway, 2006a), and limited employment opportunities have been shown to be strongly associated with recidivism (Sampson & Laub, 1993; Uggen, 2000). The enhanced labeling effect, through modern-day reliance upon electronic scarlet letters, not only affects exconvicts, but probationers as well (Scheider & McKim, 2003). The more impersonal arenas of society, such as the workplace, schools, banks, apartment complexes, the media, and insurance companies, often react to criminal records with reflexive dismissal, as opposed to people who are more intimately involved in an offender's lives, such as friends and family members (Scheider & McKim, 2003). If electronic criminal records continue to be afforded such high measure of influence, especially as screening measures for morality, there will exist an insurmountable obstacle in successful reentry programs and offender reintegration.

Western (2006) presented strong evidence that workers with criminal records do poorly in the labor market; must overcome the psychological, social, and financial consequences of imprisonment; and are often screened out by their records when they attempt to reintegrate into mainstream society (Holzer, Raphael, & Stoll, 2004; Pager, 2003; Sampson & Laub, 1993; Waldfogel, 1994; Western, 2001). Criminal records provide employers with an inexpensive exclusionary tool by which exconvicts can be barred from more desirable jobs in the primary sector; jobs which offer training opportunities, rising pay scales, and other features of stable employment (Western, 2001). It has been suggested that employers view criminal background checks as an inexpensive way to avoid negligent hiring lawsuits, or to obtain additional information on exoffenders who might actually be under consideration for employment (Stoll & Bushway, 2008). There is also a growing problem of upward bias created by the pool of exoffenders who refuse to apply for jobs where it is known a background check will be required (Winnick & Bodkin, 2008).

The use of electronic criminal history among employers is rapidly growing. Analysis indicates that over 40% of employer respondents in a California study check the criminal backgrounds of their applicants (Stoll & Bushway 2008, p. 382). Lam and Harcourt (2003, p. 241) found such a trend to be consistent in many other countries as well, such as Canada (20%) and New Zealand (66%). While the FBI's National Crime Information Center database is not typically available to the general public, by 2004 at least 16 states made their criminal records available over the Internet (Finlay, 2008). Hundreds of companies now engage in the selling of criminal history over the Internet, offering daily downloading and storing of arrest and conviction records from repositories around the country. For example, it was not long ago that attorneys had to physically go the courthouse and pull copies of speeding ticket citations in order to send out solicitation letters. Now, they can subscribe to any number of online organizations that e-mail arrest records to them on a daily basis.

Reintegration programs may set the stage for a successful transition into the community, but if the major institutions of society block a stigmatized offender's every attempt at positive change, reintegration efforts will be deleteriously affected. One needed change is to create a mechanism that limits the chronic, stigmatizing, and enduring effects of electronic scarlet letters (Kurleychek, Brame, & Bushway, 2006a; Pogorzelski et al., 2005). The federal "Second Chance Act of 2005" was signed by President Bush in order to expand reentry programs and services for men and women leaving prison, but institutional policies still exist across many domains which severely restrict their access to much-needed services (Pogorzelski et al., 2005, p. 1718). Travis and Petersilia (2001) found that prisoner reentry would be negatively impacted in several basic domains (health, child and family, workforce, civic) as a result of sentencing reform and punitive justice policies resulting from the "tough on crime" stance that swept the nation over the last few decades.

For example, one of the current authors learned from a colleague that she had been encountering an unusual amount of scrutiny from some health insurance provider certification panels regarding past drug possession convictions. This individual had demonstrated almost a decade of drug and alcohol abstinence, completed a master's degree in counseling, had already been granted two state licenses (again, after a great deal of scrutiny and an interview by a state bureau of investigations agent), established competence in the field, and enjoyed the respect of her colleagues. However, she said that the panels were requesting more information regarding misdemeanor convictions that were more than a decade old. More importantly, the credentialing personnel were only requesting information regarding the charges filed, terms of the sentence, and verification that the terms of the sentence were satisfied. This demonstrates the power of simplistic labeling practices surrounding the use of electronic scarlet letters.

A recent example from the news also illustrates the effect of criminal records. During President Obama's town hall meeting in Orange County, CA, an African American man told him that he had been laid off from his job of 14 years and was unable to find employment because a 20-year-old felony conviction kept showing up on record checks ("President Obama holds," 2009). There are those, like this man, who are frustrated by their criminal records that function as roadblocks in their efforts to integrate within society.

A FALSE SENSE OF SECURITY?

Are the requestors of criminal records simply being granted a false sense of security? In their various roles and domains, are they truly lowering risk by screening out individuals who have a criminal history? There is a stumbling block to the premise surrounding criminal recidivism and risk reduction practices—"the dark figure of crime" (Biderman & Reiss, 1967). Criminologists have long struggled with the Uniform Crime Reporting Program, because it is generally acknowledged that a high percentage of crimes go unreported, or are undetected in that they never find their way into police reports and statistical compilations. The reasons for this are varied and beyond the scope of this article; suffice it to say that criminologists agree that the study of criminal behavior is limited to the "visible tip of the iceberg of crime" (Biderman & Reiss, 1967, p. 4). Therefore, shouldn't employers

be just as concerned with the employees who might be committing criminal acts but have not been caught? In one sense, this notion of risk-reduction by employers might seem sensible, but might also be misdirected and not truly reduce their risk of victimization at all.

It is difficult to challenge the widely held axiom that past behavior predicts future behavior, and the criminal justice system in particular relies heavily on this belief. Potential employers cannot be blamed for what they consider prudent and self-protective measures against risky or potentially negligent hiring decisions. This question remains: Does the existence of a prior criminal record increase the likelihood that a convicted criminal will commit another crime? On one level, the statistical answer is “yes” (Blumstein, Cohen, Roth, & Visher, 1986; Freeman, 2008). But most researchers would agree that there are dozens of other sociological factors that contribute to—even induce—dependent variables that influence criminal behavior and strongly shape this overall notion of predictive behavior. Poverty, drug and alcohol abuse, financial distress, emotional distress, homelessness, and racial discrimination are variables of influence. These can be compounded by elements of social reaction perspectives such as labeling, stigmatization, and symbolic interaction.

When confronting the notion that a prior criminal conviction simply predicts more of the same, some researchers claim the majority of one-time offenders simply age out of criminal behavior (Hirschi & Gottfredson, 1983; Sampson & Laub, 1993; Uggen, 2000). Despite past behavior, these young men and women mature into law-abiding adults. Before the public had such easy access to Internet public records, first-time offenders were not so harshly stigmatized.

To rely solely on criminal history as a predictor of future behavior, at the exclusion of all other relevant variables, will condemn the exoffender to a predetermined fate. For instance, current sentencing guidelines rely only on existing offense characteristics and prior history at the exclusion of all other variables. One researcher objected:

How is it, after all, that purported correlations between prior incarceration and future criminality have led us to profile prior criminal history for purposes of sentencing and law enforcement, rather than to conclude that there is a problem with prisons, punishment, or the lack of reentry programs? (Harcourt, 2003, p. 164)

We consider this notion of risk reduction further by referring to the following study. Robinson and Zaitzow conducted an anonymous survey of fellow criminologists, and discovered that, at some time in their lives, 55% admitted to committing a theft, 25% had physically assaulted someone, 60% admitted using illicit drugs, 19% committed tax fraud, and 84% misused office supplies (1999, p. 19). Many employers, as well as other interested individuals, continually screen out exoffenders in order to reduce their risk, yet is the risk truly lessened? Exoffenders might actually be grateful for employment and conscious of their likelihood of being an easy target; or, as Kurleychek et al. (2006b) suggested, have begun experiencing the positive benefits of a crime-free lifestyle. This is one compelling reason why the pseudoscience of predictive behavior, in regards to criminality and recidivism, should be tempered with terms such as “associated with” and “related to.” We should encourage a practice of building upon offender strengths and attributes that contribute to successful reintegration, instead of predicting failure based solely on statistical rates of recidivism. As Kurleychek et al. postulated, the “current practices of continued civil and social consequences of arrest and conviction may be ill informed” (2006b, p. 498).

Statistics indicate that up to 80% of released prisoners are likely to be returned to prison for criminal activity or breaking the conditions (“rules”) of supervised release, and well over half that amount within the 3 years following release (Freeman, 2008; Langan & Levine, 2002). Contemporary research sheds new light upon the Bureau of Justice’s recidivism tables. Findings indicate the risk of recidivism peaks slightly after community reentry, then reduces considerably over time (Kurleychek et al., 2006b). While noting that persons with prior convictions are more likely to reoffend or be resentenced for technical violations, recent studies also indicate

that the risk of recidivism does not remain constant, but actually diminishes significantly over time (Kurleychek et al., 2006b; Kjelsberg & Friestad, 2008).

Furthermore, a cohort of young adult males born in 1958 in Philadelphia who were first arrested between the ages of 18 and 20, were found to experience fewer criminal events over time; the risk of a new criminal event among offenders and nonoffenders began to become almost indistinguishable at the 7-year mark and beyond. The findings supported that general access to most criminal history records should be time-limited in scope (Kurleychek et al., 2006a). One of the most troublesome problems with a 7-year mark concerns the challenge of getting a newly released offender from Point A to Point B, and electronic criminal records only serve to exacerbate positive efforts by convicted criminals. In the long run, blocking offender opportunities does not ensure public safety, but guarantees instead a continual flow of outcast, frustrated, and stigmatized group of people between prisons and the community (see Richards & Jones, 1997, 2004).

Research has long supported a negative correlation between work and crime, and people without jobs are most likely to be arrested (Sampson & Laub, 1990; Uggen, 2000; Warr, 1998). The effect of a criminal record on securing employment becomes more critical when the potential for recidivism is highest, which is typically during the 1 to 3 years following sentencing or release from prison (Maltz, 1984; Travis, Solomon, & Waul, 2001). Overall research findings show that individuals with criminal records experience more obstacles in gaining employment than other disadvantaged groups (Kurleychek et al., 2006b).

Segments of the exoffenders population are more disadvantaged. Blacks and Hispanics with criminal records are discriminated against at a higher rate compared to whites when seeking employment (Pager, 2003). Blacks are disproportionately arrested and convicted for crimes, and they are more likely to be discriminated against as relates to jobs, housing, voting, education, and many other social domains. Studies consistently reveal that African American offenders are often saddled with the double stigma of minority and criminal offender, and consequently do poorly after conviction or release from prison (Pager, 2003). Another group being harshly affected consist of those convicted of sex offenses. They are not only severely stigmatized, but are required to register there whereabouts with state registries, cannot work in many occupations, and have trouble finding adequate housing due to location restrictions and landlord fears.

A number of states have begun changing policies that impede the reintegration of persons convicted of crimes, prompting a revitalization of existing organizations that historically assisted exoffenders with housing, employment, public assistance, vital records, and other essential needs for successful reentry and maintenance of a law-abiding lifestyle. One organization in particular is devoted to being a national clearinghouse for information advocacy for citizens faced with blocked opportunities as a result of electronic criminal records (National H.I.R.E Network, 2010). For example, the site provides a searchable, state-by-state database that lists the phone numbers and addresses of various agencies that support reintegration efforts, ranging from state departments of labor to nonprofit justice projects devoted solely to helping persons convicted of crimes.

Additional avenues for helping employers make informed decisions are also needed. Williams (2008) explained how employers must bear the burden of avoiding negligent hiring decisions when considering exoffenders for employment, often with limited information available to them. She suggested increased collaboration between corrections departments and employers, which would facilitate more accurate screening and hiring decisions, and would possibly help employers refrain from “erring on the side of caution and turning ex-offenders away” (Williams, 2008, p. 521).

MANAGING A SPOILED IDENTITY

How does an exconvict manage his or her spoiled identity with the advent of electronic scarlet letters? In times past, a person had the option of relocate and possibly start anew. There was hope that a second chance may be

possible. Prior to computerized record backgrounding, it was quite difficult to maneuver through the array of procedures required in locating criminal records. The electronic record revolutionized criminal history with instant access.

With the explosion in electronic backgrounding, a criminal record is a permanent symbol of a spoiled identity, which never disappears without a complete, and probably illegal, change of identity. One's electronic history threatens to surface on life insurance, credit scores, school, housing, and job applications. It shows up during traffic stops and draws attention from police, especially when they already know the exoffender. The electronic scarlet letter now ensures an even faster societal reaction. As Becker (1963) pointed out, a deviant label forces an excon to seek out ways to cope with the fact that society is eventually going to react—it is just a matter of where and when. They will seek out methods to either “pass” (Goffman, 1963), or to a lesser extent, will achieve mastery in some area through which their past might be overlooked, or they might actually draw attention to their past and use it for meaningful purposes: Convict criminology, for example (R. S. Jones, Ross, Richards, & Murphy, 2009).

The effective management of a spoiled identity is not common, however, as high recidivism rates appear to confirm (this is likely due to a lack of social and cultural capital). It appears that most excons are not very successful at managing their spoiled identities while simultaneously navigating through the gauntlet of social obstacles before them. The difficulty is compounded by decisions made at the time of release sending offenders back to criminogenic neighborhoods with few available resources that are required for successful reentry. Recidivism rates also support the observation that a commonly employed alternative used by stigmatized offenders is to simply return to prison. We suggest that an electronic scarlet letter plays a significant role in the *social emasculation* of a labeled criminal offender. Saddled with a variety of social disadvantages such as low education, minority status, few job skills, and a broken family, an exoffender comes to believe that he is impotent to change his circumstances (Irwin, 1987). He is always conscious of his stigmatizing label (Goffman, 1963; Becker, 1963; Winnick & Bodkin, 2008). Some may employ a sort of “face-saving technique” by either committing a new crime or violating some condition of release. As odd as this rationale may seem, offenders return to prison with confidence in knowing they will be more accepted by the prison society than by the “free” society. The label has become internalized. An identity outside prison walls has been destroyed, and “the person becomes the very thing he is described as being” (Tannenbaum, 1938, p. 19). Becker maintained that the labeling process completes when: “The deviant is one to whom the label has successfully been applied” (1963, p. 9).

THE SUCCESSFUL MANAGEMENT OF STIGMA

Goffman (1963) analyzed various methods stigmatized persons employ when attempting to manage a spoiled identity. He suggests that stigmatized people are always aware of the possibility that someone from their past will introduce discrediting information that could sabotage their attempts at normalcy. The stigmatized person must control the information they convey to others—they will attempt “passing,” as normal, and may even employ the use of “disidentifiers” which break the mold, such as intellectual-looking eyeglasses, changed names, or the use of proper English. Exconvicts may discourage curiosity by telling deliberate lies and redirecting inquiries. Close relationships often must be avoided. In this way, stigmatized persons can purposely disclose information in a preemptive manner, allowing them a more controlled management of uncomfortable situations that might arise in everyday discourse with others.

Winnick and Bodkin (2008) administered questionnaires to 450 minimum-security prisoners, most of whom were nearing the end of their sentences. They found that a high number of respondents anticipated social stigma after release, and overwhelmingly supported “preventive telling” (p. 321). The respondents might simply have been optimistic about their chances of success, for they had not yet encountered actual rejection and

suspicion. In fact, the authors discovered significant predictors of secrecy and withdrawal after employing regression analysis on data collected (Winnick & Bodkin, 2008).

There have been many notable successes in overcoming the criminal stigma. With an irony that cannot be escaped, hundreds of exconvicts have used higher education as the means for reintegration (Richards & Ross, 2001; Ross & Richards, 2003; Richards, 2004; R. S. Jones et al., 2009). Many have left prison and earned PhDs, or are on their way to completing them. Dozens of criminally labeled professors teach in universities and colleges around the country, have become public examples of reform ideology, and bring a much-needed ethnographic perspective to criminological research. There is one noteworthy point that should not be overlooked; a common theme among many of these exconvict scholars is that education “opened their eyes” to an entirely new world, motivated them to integrate into society, and become positive forces for good (Ross & Richards, 2003; Richards, Ross, & Jones, 2008).

This phenomenon has brought forth a theoretical perspective that effectively argues the real social consequences of modern criminal justice activities. Convict criminology is a scholarly based school of criminology which primarily consists of essays and empirical research, conducted and written by convicts, exconvicts, or like-minded scholars who have either earned, or are in the process of completing, their PhDs (Richards & Ross, 2001; Ross & Richards, 2003; R. S. Jones et al., 2009). Convict criminology finds its roots in Goffman's works on total institutions and stigma, adheres to Irwin's belief in the importance of qualitative and ethnographic research regarding human behavior, and becomes the impetus by which participant–observer research can be carried out in prisons and on criminal behavior (R. S. Jones et al., 2009).

During the 18th century, Beccaria emphasized that punishment should be proportionately matched to the seriousness of the crime, and be applied with only as much severity as was required to outweigh the personal benefits of a criminal behavior. In essence, it should be the minimal amount required to justly counteract the social cost of a crime and dissuade the criminal from further crime. The degree of public shame accompanying a punishment was to be carefully metered and minimally applied as well (see Beccaria in Paulucci, 1963). Yet today, simply an arrest (not a conviction) initiates the process of public shame, humiliation, and punishment well before guilt or innocence is proved. It is now generally accepted that most arrests, regardless of their outcomes, surface in criminal record checks (Kurleychek et al., 2006b). Therefore, it is logical to assume that tens of millions of Americans who have merely been arrested will not only suffer a measure of public shame, but the inevitable collateral consequences that amplify the original punishment to disproportionate levels by a resurfacing “badge of shame” (Burton, Cullen, & Travis, 1987).

CONCLUSION

Clearly, an extensive shifting of current public perception must take place as relates to the needs of ever-increasing numbers of exoffenders in finding ways to offset the damaging effects of electronic criminal records, especially on our available workforce. Gordon (1987) addressed the issue of electronic criminal records over 2 decades ago, and issued a strong warning about the emergence of an “electronic panopticon” that would utilize criminal records to facilitate surveillance of citizens with criminal histories, all in the name of crime control (p. 500). However, what has now been done cannot be undone. The genie is already out of the bottle (Freeman, 2008). By sensibly balancing public safety concerns with the needs of released offenders, the corrections establishment can begin to bear the burden of preparing offenders for reintegration. This can be accomplished by modifying negligent hiring laws, expanding the availability of corrections resources into more comprehensive reintegration programs and community supervision, and providing previously unavailable offender history and crime-specific details surrounding a person's offense (Williams, 2008).

Instituting time limits on the use of criminal information for hiring, housing, and welfare discrimination would allow many offenders to more effectively position themselves for meaningful success at rehabilitation. More detailed offender and crime-specific information should accompany criminal record checks. Already-existing resources and information held by corrections and criminal justice agencies should be made more available to the general public. Supporting grassroots initiatives such “Ban the Box,” (All of Us or None, 2010) that advocate the passing of legislation that prohibits employers from initially disqualifying exoffenders simply because they checked a box on an application. Four states have enacted legislation to this effect, and more are currently proposing changes to this type of employment screening practice.

Edward Livingston, who wrote the penal code for Louisiana in 1833, provided monetary incentives for prison wardens whom were successful in preparing, educating, and encouraging prisoners to successfully reintegrate after their release (Livingston, 1866). The burdensome consequences of determinate sentencing practices and the abolishment of parole are now surfacing in the literature (Pogorzelski et al., 2005). The spirit of humanity and compassion behind former prison reform efforts is almost completely missing today, and the electronic scarlet letter has become the technological driving force behind lifelong disenfranchisement of exoffenders.

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