

Criminal Records and Volunteering: A Brief Scan of the Literature as it Relates to Social Inclusion

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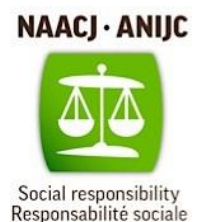
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Abstract

As the first step in our study to better understand the opportunities and gaps that exist for individuals with criminal records to be engaged in their communities through volunteering, this paper will review recent, accessible literature that exists around social inclusion for people involved in the criminal justice system.

The capacity of people with a criminal record to engage in social networks and to become a contributing member of the community and work force is also reviewed as part of this work.

Introduction

This paper will briefly review primarily electronically accessible literature about the social and economic inclusion of people who are involved in the criminal justice system through volunteering, who we will refer to as people with a criminal record (PwCR). It will focus on materials published within the last five years, despite building upon the knowledge from two articles that served to guide this project prior to that: *Review of Social Inclusion and Exclusion. A Critical Review of Social Exclusion and Inclusion Indicators: Implications for the Development of a Canadian Framework* (Hyman, 2012) and *Volunteering for All? A Qualitative Study of Women Ex-offenders' Experiences of Volunteering* (Taylor, 2008). A further starting point for our work was the familiar *Ex-offenders as Peer Volunteers: Promising Practices for Community-based Programs. Knowledge Development Centre* (Imagine Canada, 2016).

Although we have kept in mind the circumstances and needs of particular sub-populations of PwCR¹ as they relate to social inclusion and exclusion, it was not within the scope of this review to explore the research more deeply in order to identify and review further knowledge in these particular areas. We have, however, uncovered several papers that provide new insights and perspectives about the social inclusion of people with criminal records that have not existed to date.

Literature Review

The literature and scholarship surrounding the social inclusion of people with criminal records has been growing along with the increased prevalence of background checks in the United States, Canada and now Europe over the last two decades. Just as we have seen increased securitization and surveillance in society and a greater public demand to feel safe (Harvey, 2019), so too have we seen greater discourse and study into the Anglosphere's use of police background checks and the impact of criminal records (Henley, 2019).

To date, shame and stigma have dominated the discourse (Goffman in Harvey, 2019; Foucault in Henley, 2019; Cherney & Fitzgerald, 2016), with scant evidence focusing primarily on the extent to which there are correlations to be made between criminal records and employment (Kurtovic & Rovira, 2016; Kenny & Conway, 2015), or between criminal records and recidivism (Folk, Mashek, Tangney, Stuewig & Moore, 2015). With 20 million Americans, approximately 4 million Canadians, 6.3 million Germans and over 11 million people in the United Kingdom burdened by

¹ Individuals who have served short sentences of 1 to 9 years; Individuals who have served long sentences of 10 years or more; Individuals of Indigenous ancestry; Young adults aged 18 to 25; and Individuals who are aging (50+ years of age).

legislation and policy that limits their access to opportunities such as employment, education, volunteering, housing, adoption and travel, it's no surprise that we are seeing more and more nuanced analyses of the impacts these criminal records have on individuals, their families and our communities continuing to emerge over time. Perspectives from individuals with a criminal record themselves (Harvey, 2019; Canseco, 2019), investigations into the role of technology (Corda & Lageson, 2019; Henley, 2019), linkages between political participation and social engagement (Gerber, Huber, Biggers & Hendry, 2017), and data comparing university admissions policies around criminal records (Custer, 2018) are but a few examples of how our experiences, curiosity and learning are expanding and contributing to this area of social justice.

The discourse today reaffirms how criminal records continue to disproportionately impact and punish people who are racialized and marginalized (Canesco, 2019; Harvey, 2019; Henley, 2017; Ispa-Landa and Loeffler, 2016), thereby increasing the possibility that systems and structures will push ever more people from the margins of “civic purgatory” (Henley, 2018) into “social death,” whereby individuals have lost their social identity and connectedness (Králová, 2015).

There is widespread recognition that further research is needed to improve our understanding of the interconnections between social norms, attitudes and perceptions, and how they influence legislation, policy and practices, particularly as they impact PwCR. There was a dearth of literature on our particular topic from a Canadian perspective, but have identified several salient papers and findings that, together, give us a better understanding of how PwCR experience social inclusion. With high numbers of people affected by prohibitive policies that disenfranchise, marginalize and further punish PwCR by denying social welfare (Brown, 2018), there is no doubt we will continue to see studies and analyses of these circumstances in the ‘international outlier’ of severity: United States.

Currently researching the “impact of criminal records on citizenship and life chances,”² Henley explores the ubiquity of criminal records checks, their potential to lead to discrimination and the exclusion of individuals who have, as a result, become “vulnerable to a regulatory power” that “disallows life” (Henley, 2017; Foucault, 1978). He argues that PwCR may experience greater pain from the extended punishment of their criminal record, i.e. they have served their sentence and payed their debt to society, but continue to be punished through the denial of rights and entitlements associated with “meaningful citizenship” post-sentence (Henley, 2017). Further to Foucault's concept about the “suspension of rights” after breaking the social contract by contravening a law,

² Research Summary. Andrew Henley, Assistant Professor of Criminology, Faculty of Social Sciences, University of Nottingham. nottingham.ac.uk/sociology/people/andrew.henley

Henley questions when this suspension ends, when ‘normal’ citizenship resumes – or if it ever existed in the first place for PwCR (Henley, 2017). He goes on to suggest that criminal records have a “limited utility as a public protection measure,” and explores how criminal records, and the information contained therein, are “increasingly being used outside of the remit of the criminal justice processes” (Henley, 2019). In England and Wales, PwCR experience discrimination in domains such as employment, financial services e.g. obtaining a mortgage, accommodation and housing, access to higher education, travel, immigration and “the right to participate in civil society.” Referring to Nils Christie’s seminal work the *Limits to Pain* (Christie, 2007), Henley emphasizes that we must “strive for pain-reduction” to reduce social harms such as these that extend beyond the original sentence, and further exacerbate the suffering and exclusion of some of the most vulnerable members of society (Henley, 2019).

Following in that vein, Henley provides an excellent discussion that compares and contrasts “legal rehabilitation” models in various countries³; recognizes that “desistance is the norm” after 10-15 years (Hanson et al, 2018 in Henley, 2019); and, offers four principles to prioritize justice and guide the fair treatment of PwCR going forward. Applied together, he proposes an approach based on:

- Retraction: To limit access of criminal records to police and courts.
- Relevance: To ensure the criminal record is relevant to the purpose for which it is sought.
- Recency: To recognize desistance, and the evidence around the “time to redemption.”
- Redeemability: To provide the “right to hope” and ensure that no one is automatically excluded from justice and fairness (Henley, 2019).

Two recent theses in Canada, both out of Ottawa, build well onto these principles for the purposes of this project, insofar as they share the perspectives and lived experience of “record-bearers” (Ispa-Landa and Loeffler, 2016 in Harvey, 2019). *Sticks and Stones Will Break My Bones but Names May Never Hurt Me* is a new Canadian article exploring the emotions and self-stigma - some of the barriers - experienced by men with criminal records in Ottawa (Harvey, 2019). *In the Eye of the Employer* is the second Canadian study exploring employers’ perspectives and practices concerning PwCR and employment (St. Helene-Uko, 2017). Together with the articles reviewed as part of this literature scan, these dissertations provide a comprehensive overview of how the criminal

³ Including: automatic expungement; ‘certificates of conduct’ to reassure prospective employers; “occupational disqualification orders” imposed at sentencing; and, “judicial rehabilitation,” which is achieved by applying to the judiciary.

records process works in Canada, and how criminal records are perceived by men with criminal records and by employers.

First, in order to establish the development of shame and self-stigma, Harvey discusses the politicization of crime and those who perpetrate it. Since the 1970's, any rehabilitative function of the law "has been subordinated to other penal goals, particularly retribution, incapacitation, and the management of risk," so much so that every criminal event or decision is "highly charged" in the public domain, "under the glare of publicity and political contention" (Harvey, 2019). As such, legislation and policy are "developed to reduce fear, rather than reduce crime," further justifying the need to monitor, control, surveil PwCR to keep us feeling safe. He connects all of this to the shame people experience, the daily reminders that they have a criminal record, the lifetime restrictions to education, employment and housing.

...legislatively mandating stigma in the form of criminal records is more likely to act as a serious detriment rather than a benefit to society where there seems a strong consensus that stigma, besides negatively situating an individual in society, also eats away at the fabric of society itself. (Harvey, 2019).

He reminds us that the Canadian *Charter of Rights and Freedoms* does not identify criminalization as grounds for discrimination and demonstrates how PwCR in Ottawa, Canada also suffered from "discrimination through alienation." Participants, and sometimes the author, expressed feelings identified as

fear, shame, discrimination, alienation, sadness, and anger; [and how they] interact with the corresponding self-stigmatizing emotional narratives found in the stories of my respondents who are similarly situated as I, by both having a criminal record and feelings about it. We, like a possible four million or more other Canadians, wish to move on from our past mistakes but are unable when confronted with structural barriers (e.g., criminalization, stigmatization, criminal records and/or criminal record checks) that predominantly limit one's agency and integration in society (Harvey, 2019).

Two participants referred specifically to volunteering, but from very diverse views:

If they ask you for your criminal record check it has to be clean; if it wasn't then I would be null and void for any volunteering at any time and ever with the school and I enjoy doing the Skiing Club with my kids and their friends and I've been doing it for years, with all three kids. I would not want that to end and now with my little one, so I don't take the chance (Barry, in Harvey, 2019).

criminal record checks for volunteering ...should be kind of targeted towards pedophiles and, and people of high-risk to offend or commit a crime against somebody in that scenario where they are working or volunteering, it shouldn't really apply to a guy like me, even though I do have violence on my record, you know, I fought with people but I don't fight with kids, I don't fight with women, that's not the thing, so it should really not affect my volunteering for kids or anything like that, no (Charles, in Harvey, 2019),

Respondents also mentioned: the impacts of their criminal record on their family and loved ones, how they didn't want to be a burden; how they felt stuck between two worlds; "caught in a social game of avoidance and anticipation", or weighed down "like an anchor." Some felt that the system is set up to continue punishing PwCR long after they have completed their sentence. Overall, barriers to employment seemed to be the greatest concern expressed by these men with criminal records (Harvey, 2019).

Second, St. Helene-Uko's dissertation *In the Eye of the Employer*, explored the practices and perceptions of employers as they relate to PwCR, also in Ottawa. A summary of existing research about perceptions and stereotypes that employers may possess about PwCR was followed by the presentation and discussion of interview findings. The research gleaned, among other things, that: there was a lack of understanding and information about an employer's right to request a criminal background check; employers who didn't request criminal checks did not think they were necessary for the position; employers had mixed reactions to what they perceived as major and minor crimes; employers were concerned with providing an adequate level of support to an employee with a criminal record; and, employers were cognizant of and would need to consider if/how hiring a PwCR might affect their 'bottom-line' (St. Helene-Uko).

Interestingly, her findings indicated that:

- Criminal record verifications were seldom used among employers to check for past convictions;
- Employers were willing to hire persons with criminal records, provided that they could justify or tolerate:
 - The nature, context, and time since the offence,
 - Their age at the time of the offence, and
 - The loss of customers, profit or status.

- Employability was based primarily on whether the candidate in question had the skillset required for the position, making the criminal record a secondary consideration (St. Helene-Uko, 2017).

Six themes emerged that might inform future strategies, directions, tools and research:

1. The necessity of conducting criminal record checks, while maintaining privacy and respect.
2. Employers see criminal record checks as a justifiable measure based on the role or position.
3. Hiring PwCR is complex, involves conditions and presents challenges for employers, particularly if/when a criminal record is disclosed.
4. The employer has a role within the broader community to support, hire and include PwCR.
5. The views and feelings of the employer about the economic inclusion of PwCR into the workforce.
6. There are perceived distinctions between “ex-offender” and “person with a criminal record” language (St. Helene-Uko, 2017).

Altogether, this phase of the project to scan the literature has shed light on existing models and processes legislating criminal records, how PwCR feel shame, stigma and experience political, structural and emotional barriers to social inclusion. The open, honest and courageous contributions of people living with criminal records have illuminated just how egregiously these barriers serve to exclude productive citizens.

Conclusion

Despite the increasing scholarship around criminal records, and the prevalence of criminal records, further study, particularly as it relates to the lived experience of PwCR must be explored. Research into the particular relationship between voluntary service, as a precursor to education or employment, and social inclusion would allow us better identify where we may leverage or target our efforts. Tools and training for PwCR, employers, in addition to public awareness strategies to ‘normalize’ PwCR and decrease fear, could be developed. Keeping in mind that most Canadian Provinces and Territories do not recognize criminalization as protected grounds against discrimination, legislative and regulatory amendments, which are person-centered and principles-based (i.e. retraction, relevance, recency and redeemability), should continue to be sought.

Other considerations going forward might include:

- Promoting the appropriate matching of employers and PwCR, based on the skills and opportunity.
- Investigating the circumstances that contribute to the successful social and economic inclusion of individuals with a criminal record in Canada and elsewhere.
- Creating plain-language tools and information kits to share information with PwCR, schools and employers.
- Developing concise, palatable, intersectoral research summaries that bring together existing and emerging knowledge from various disciplines.

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