TIME FOR POLICY REDEMPTION?

A CRITICAL REVIEW OF CRIMINAL RECORD DISCLOSURE POLICIES AND PRACTICES

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KEY QUESTIONS

- Why do we do this? What purpose does the disclosure of criminal records serve in recruitment?
- How do we do it? When do we do it? And why might that matter?
- What effect does it have for people with convictions and for employers?
- What could we do differently?

RATIONALES AND PURPOSES

Reasons for checking criminal records by employers include:

- minimising risk of liability and loss;
- concerns surrounding public protection where the nature of employment includes working with vulnerable groups;
- assessments of moral character in terms of honesty and trustworthiness;
- and compliance with statutory occupational requirements (Blumstein and Nakamura, 2009).

The assumption underpinning disclosure then is that it is effective in protecting potential employers and the wider public.

EXISTING APPROACHES: REHABILITATION OF OFFENDERS ACT (1974)

- Purpose: a system that effectively clears criminal records after a specified period following a given sentence.
- With exceptions – e.g. currently a custodial sentence of 30 months or more is never spent and will always disclosed.
- Critiques:
  - Lengthy rehabilitation periods (McGuiness et al., 2013)
  - Confusing for people with convictions (Fletcher et al., 2012)
  - Confusing for employers (Metcalfe et al., 2001; Haselwood-Pocsick, 2008).
- It is likely that the recent series of amendments to the ROA, which have expanded the number of professions and situations where ROA ‘protections’ do or do not apply, have exacerbated this.

EXISTING APPROACHES: THE DISCLOSURE SYSTEM

- 4 levels of disclosure: Basic; Standard; Enhanced; and PVG
- Spent convictions are always disclosed on all but basic level disclosures
- The period of disclosure is based on the offence type rather than sentence (c.f ROA)
- Other Relevant Information (ORI)/ 'Soft' information can be disclosed on enhanced level disclosures.
- Current reforms to the ROA are under consideration in the Management of Offenders (Scotland) Bill, 2018 which restrict disclosure by:
  - Reducing the length of rehabilitation periods
  - Increasing threshold from 30 months custodial sentence to 48 months.

WHY DOES THIS MATTER? Time to Redemption Studies

Authors	Where	What	Time to Redemption Period
Kurlychek et al., (2006); Kurlychek et al., (2007)	U.S	Arrest and Contact Records data.	7 Years.
Blumstein and Nakamura (2009)	U.S	Arrest data: variation by age and crime type	Younger onset of offending leads to longer time to redemption periods; people convicted of violent crimes also have longer time to redemption periods than those convicted of property crimes
Soothill and Francis (2009)	U.K	Conviction data.	10 years
Bushway et al., (2011)	Netherlands	Conviction data: age and criminal history	10 years, but for older people, this time is reduced, and does not apply to those with extensive criminal histories.

IMPACTS AND EFFECTS: PEOPLE WITH CONVICTIONS

- Employment is a key protective factor in desistance.
- However – there's a complex relationship between un/employment, offending and desistance.
- Employment does not in and of itself cause or trigger desistance.
- What matters is the meaning and outcomes of the nature and/or quality of the work, or participation in employment and how these factors a) influence self-concept and social identity, b) how they interact with a person's priorities, goals and relational concerns (Weaver, 2015)
- Encountering myriad obstacles to employment can destabilise desistance

IMPACTS AND EFFECTS: EMPLOYERS ATTITUDES, DECISION MAKING AND BEHAVIOURS

- The mere indication of a criminal record can put employers off (Holzer et al., 2003; 2004; 2007; Pager, 2003; Stoll and Bushway, 2008)
- 56% of public employers and 81% in the private sector had ‘anxieties’ about employing someone with a criminal record (Fletcher, 2001).
- Ban the Box movement: campaign to remove criminal history tick box from application forms; those with a criminal record fare worse in the application stage of employment (Pager, 2003; Pager et al., 2009, 2009; Uggen et al., 2014).
- Employment prospects improve significantly for applicants who have a chance to interact with the employer (Ali et al., 2017; Pager et al., 2009).
- Many employers do not understand the information provided or it’s implications, which implies the need for some guidelines.

ALTERNATIVE APPROACHES: BEYOND THE U.K

- Practices of disclosure vary widely internationally
  - U.S., focus on judicial transparency: publicly accessible and privately available
  - U.K., wide and complex disclosure system, including use of 'soft information', may undermine prospects for reintegration and contradict the 1974 Act?
  - Europe – rights based (privacy and rehabilitation): disclose only unspent convictions
- Larrauri Pijoan (2014a: 735) argues that the disclosure of criminal histories is not inappropriate but that:

  'a fair balance must be struck between the general aims of public protection, the specific aims of employer selection processes and the individual's right to respect for privacy as well as the criminal justice interests in rehabilitation and reintegration. In brief, the disclosure of criminal records has to be proportionate in order to avoid an illegitimate interference with the right to privacy'.

APPROACHING REFORM?

- **Forgetting**
  - Reviewing Spent Periods and the Disclosure of Enduringly Unspent Convictions
- **Forgiving**
  - Certificates of Rehabilitation
- **Forbidding**
  - Court Imposed Occupational Disqualification
- **Facilitating**
  - The Production of Guidance

LAST WORDS

- Argument that existing reforms could go further to ameliorate impacts on access to employment, desistance and reintegration.
- **Key question:** what kind of model(s) do we want to adopt? In which direction are we heading?
- **Key issue**: in the U.K, existing practices of disclosure retain the right to require that spent convictions and soft information will always be disclosed in certain circumstances, justified in reference to purposes of public protection.
- This is *irrespective* of whether the person's risk of reconviction is equivalent to that of non-convicted persons (time to redemption) and often in contradiction to the 1974 Act.
- Disclosure of criminal histories tend to engender risk-averse reactions from many employers, who may be reluctant to employ and by destabilising desistance can undermine public protection in the longer term.