

# **WORKING PAPER:**

## **The Increasing Stickiness of Public Labels\***

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**DRAFT**

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## The Increasing Stickiness of Public Labels

There has been a tremendous revolution in life course criminology, as careful longitudinal research has shown us how criminal behavior changes from month to month and year to year. We now have clear evidence that pretty much “all offenders eventually desist” (Laub and Sampson, 2003). Yet our laws, policy, and public discourse have all lagged behind this revolution in scientific knowledge. The latter continue to proceed as though there are “two kinds of people in the world,” and if we would simply lock up the bad guys forever, the rest of us will be safe. We thus continue to affix a more or less permanent label on people who engage in crime.

But a *second* revolution has transformed the stickiness of these labels. We will argue here that new and disruptive information technologies now make these labels more accessible and consequential, blurring the boundaries between public and private information. People now know more about their fellow citizens than ever before, such that labels are increasingly difficult to “peel off,” dissolve, and remove. This juxtaposition is causing all sorts of difficulties, particularly in regard to the dual imperatives of public criminology. How do we enhance the quality of justice while also improving and protecting public safety? And how does the increasing stickiness of public labels affect the prospects for truly reintegrative approaches to public safety (Braithwaite, 1989)?

Below we will present some examples of fluidity from our own research and then discuss how labels retain their stickiness. Making extensive use of graphics and figures, we will show the demographic growth of felon and ex-felon populations in the United States and discuss how these populations spillover to affect other social institutions. Next, we identify some reintegrative interventions that may facilitate desistance from crime, versus stigmatizing collateral sanctions that likely constitute “piling on” (Uggen and Stewart 2015). Finally, we will move beyond the U.S. context and raise more dramatic alternatives, as well as more modest or incremental reforms.

### Age, Crime, and Fluidity

There is a pronounced empirical relationship between age and crime for a great range of criminal activities. As the figure below shows, there is a somewhat flatter age profile for rape arrests than there is for burglary arrests, but arrest certainly remains much more

likely in the teens and twenties than in the thirties and forties. These smooth curves, of course, mask great intra-individual movement.

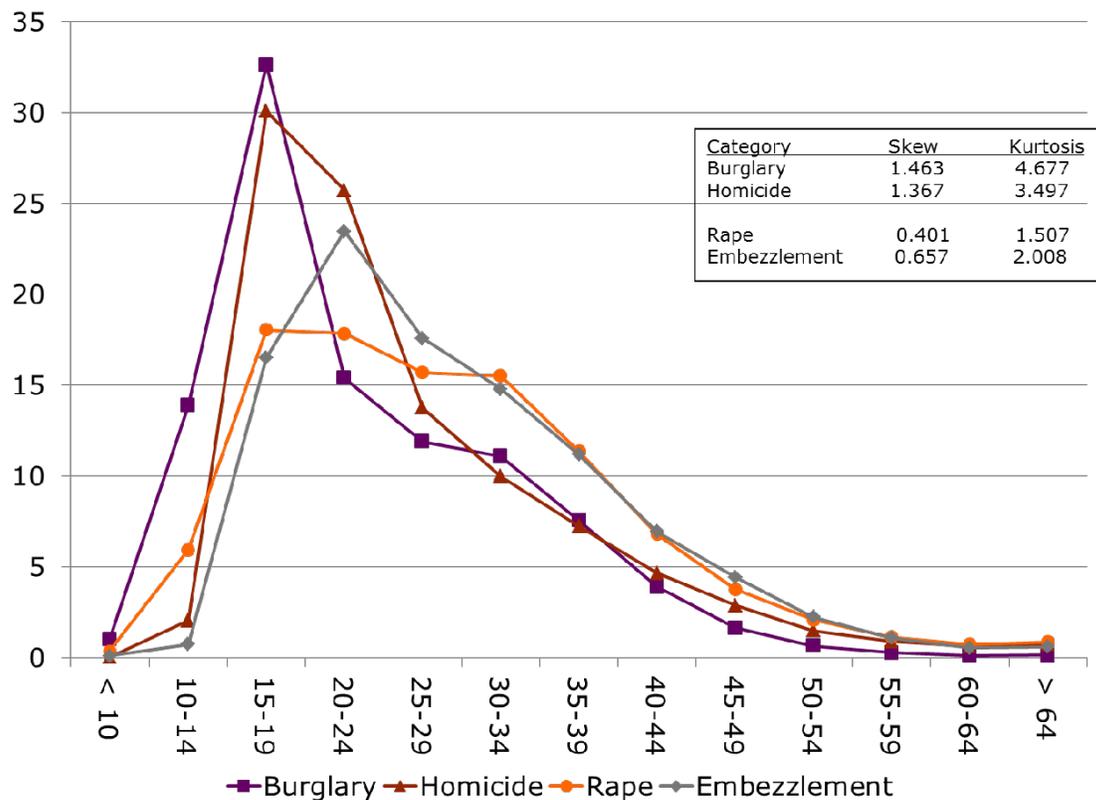


Figure 1: The U.S. Age Distribution of Arrest (source: Nyseth Brehm, Uggen, and Gasanabo 2014)

When we look more closely at individual offending patterns, we observe that desistance unfolds in fits and starts. With Melissa Thompson (2012; 2003), Uggen has been investigating what is happening in people's lives when they are in higher and lower periods of illegal earning activity. One study considered monthly patterns for the 4,927 participants in the National Supported Work Demonstration Project, an experiment that provided jobs to both people leaving prison and other people with barriers to employment. The figure below charts the pattern for Paul, a participant from Oakland, California. Paul had been using cocaine and was incarcerated for at least a portion of the first month of the program. He also perceived frequent illegal earning opportunities, and he self-reported making about \$867 illegally that month (or \$200 per week). He was living with his spouse or partner but was not employed. He began working in a Supported Work job in the sixth month. Nevertheless, he was rearrested in the eighth month, his substance use escalated to include heroin in month ten, his illegal earnings escalated to over \$3,000 per month, and he was no longer partnered or working in either a program job or a regular job.

	1	2	3	4	5	6	7	8	9	10	11	12
<b>Drugs and Money</b>												
Drug use	coke											
Earned legal \$						433	433	433	433			
Earned illegal \$	867	867					867	867	867	867	3342	3342
Unearned legal \$									84	146	146	146
<b>Opportunity Structure</b>												
Incarceration	yes	yes	yes	yes	yes							
Unemp. rate	11.6	11.6	11.6	11.2	11.2	11.2	11.0	11.0	11.0	10.6	10.6	10.6
Illegal opportunities	high											
<b>Crim. Embeddedness</b>												
Unemp/deviant friend									yes	yes	yes	yes
Arrest experience	8	8	8	8	8	8	8	10	10	10	10	10
Age	33.0	33.1	33.2	33.3	33.3	33.4	33.5	33.6	33.7	33.8	33.8	33.9
<b>Conv. Embeddedness</b>												
Spouse/partner	yes											
Regular employment												
Program employment					yes	yes	yes	yes	yes			
School attendance												
<b>Subj. Risks &amp; Rewards</b>												
Perceived risk of prison	low											
Earnings expectations	350	350	350	350	350	350	350	350	300	300	300	300

Key:   
Absence of Characteristic:    
Lower Levels:    
Higher Levels:

Figure 2: Year 1 Array of Legal and Illegal Activities (adapted from Uggen and Thompson 2003)

Although Paul’s level of illegal earnings is relatively high, this was not an unusual pattern among participants in the first year of the program. There is more of the same at the start of Paul’s second year, as shown in the next figure, and one would have to be fairly pessimistic about his prospects. He is earning about \$2,500 per month illegally, and he is still using cocaine and heroin. His reported substance use, however, stops abruptly after eighteen months. At that point he is either reunited with his spouse or he is with another spouse or partner. Still, he reports no work and only a tiny amount of unearned legal income (likely General Assistance support).

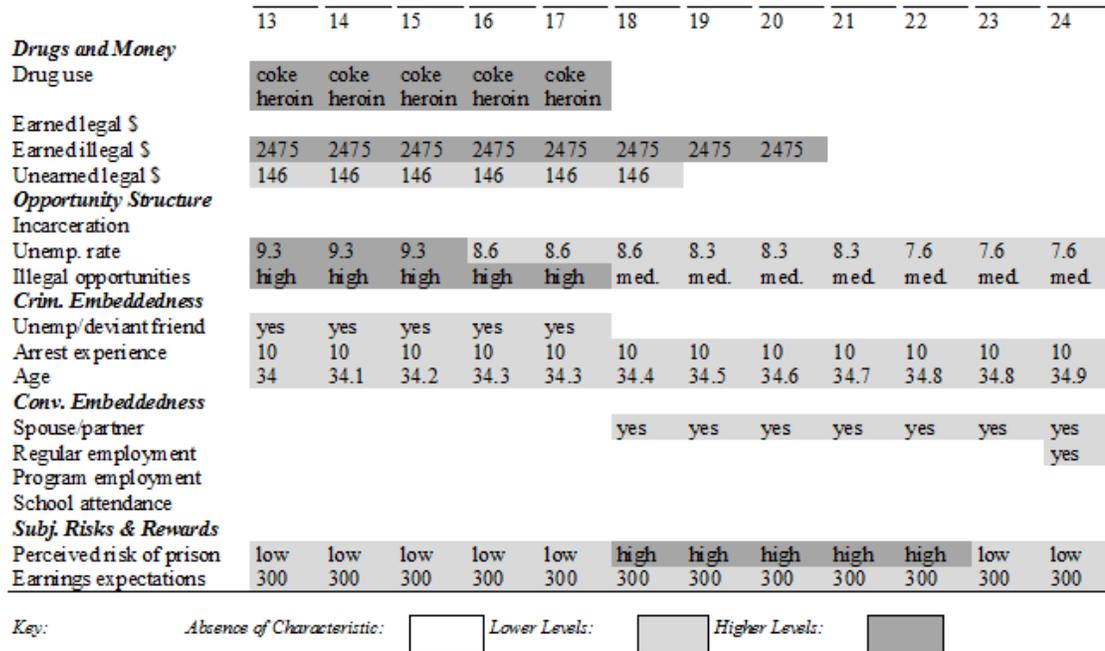


Figure 3: Year 2 Array of Legal and Illegal Activities (adapted from Uggen and Thompson 2003)

Finally, after two full years, he picks up some regular (unsubsidized) work, and he begins reporting steady legal earnings of about \$1,000 a month. As shown in the next figure, he is no longer getting arrested, he is steadily employed, and he is in a stable relationship. In short, he is the very picture of the change that most reintegration programs are trying to induce.

	25	26	27	28	29	30	31	32	33	34	35	36
<b>Drugs and Money</b>												
Drug use												
Earned legal \$	1066	1066	1066	840	840	840	840	840	840	840	840	840
Earned illegal \$												
Unearned legal \$												
<b>Opportunity Structure</b>												
Incarceration												
Unemp. rate	6.2	6.2	6.2	5.6	5.6	5.6	6.9	6.9	6.9	5.1	5.1	5.1
Illegal opportunities	med.	med.	high									
<b>Crim. Embeddedness</b>												
Unemp./deviant friend			yes									
Arrest experience	10	10	10	10	10	10	10	10	10	10	10	10
Age	35	35.1	35.2	35.3	35.3	35.4	35.5	35.6	35.7	35.8	35.8	35.9
<b>Conv. Embeddedness</b>												
Spouse/partner	yes											
Regular employment	yes											
Program employment												
School attendance												
<b>Subj. Risks &amp; Rewards</b>												
Perceived risk of prison	high	high	med.	low								
Earnings expectations	300	300	800	800	800	800	800	800	800	800	800	260

Key: Absence of Characteristic:  Lower Levels:  Higher Levels:

Figure 4: Year 3 Array of Legal and Illegal Activities (adapted from Uggen and Thompson 2003)

Of course, whether we consider Paul a recidivism success or failure depends on *when* we look at him. This sort of fluidity in offending is well understood by every desistance researcher, yet it remains poorly understood by the public and in policy circles. In the first year, Paul is involved in a great deal of criminal activity which might merit arrest and incarceration. By the third year, however, he appears to be living a completely different life -- it would have been a colossal waste to incarcerate him at this point, as society would be forgoing all his productive economic activity and bearing the costs of his incarceration. But what about that second year? Would re-incarceration have slowed or undone the reintegrative progress that Paul had been making, prolonging the cycle of recidivism and incarceration? Such questions are difficult to answer in desistance research, but timing clearly matters.

While the distinction between criminal and non-criminal is largely a matter of time, desistance research also shows us how other life course markers map onto this process. When Mike Massoglia and Uggen began studying contemporary adulthood (2010), we fielded some questions on a longitudinal survey, asking people in their early thirties questions such as, "Do you feel like an adult most of the time?" Standard life course markers such as having children, completing school, and getting married were quite predictive. What was interesting, however, was that the effect of being arrested was at least as strong as any of these life course markers in terms of feeling like an adult. Both "subjective desistance" (slowing down relative to yourself five years ago) and, to a lesser

extent, reference group desistance (slowing down relative to others your age) had similar effects. By any measure, then, continued criminality appears to have a juvenilizing effect that delays the assumption of adult status.

REFERENCE GROUP DESISTANCE, SUBJECTIVE DESISTANCE, AND SUBJECTIVE ADULT STATUS: LOGISTIC REGRESSION ESTIMATES

Variable	Model 1	Model 2	Model 3	Model 4	Model 5
Reference group desistance . . . .	.472** (.168)	.245 (.200)			.096 (.215)
Subjective desistance . . . . .			.626*** (.183)	.557** (.221)	.518** (.235)
Arrest (1 = arrest in 2000– 2002) . . . . .		–1.491*** (.406)		–1.552*** (.406)	–1.537*** (.408)
Male . . . . .		–.304 (.199)		–.236 (.202)	–.238 (.202)
White . . . . .		.035 (.237)		.015 (.238)	.023 (.239)
Marriage . . . . .		–.013 (.219)		–.040 (.218)	.049 (.220)
Educational attainment . . . . .		–.187 (.215)		–.207 (.216)	–.201 (.216)
Self-sufficiency . . . . .		.407* (.218)		.402* (.219)	.405* (.219)
Children . . . . .		.860*** (.225)		.823*** (.225)	.817*** (.226)
Voting . . . . .		.521** (.221)		.451* (.222)	.452* (.223)
Prior adult status (1999) . . . . .		2.171*** (.220)		2.223*** (.224)	2.226*** (.224)
Missing dummy for prior adult status . . . . .		.157 (.278)		.091 (.281)	.084 (.280)
Intercept . . . . .	.630*** (.125)	–1.082** (.415)	.457*** (.154)	–1.247*** (.426)	–1.268*** (.426)
–2 log likelihood . . . . .	841.72	663.78	837.04	656.12	655.47

Table 1: Predictors of Subjective Desistance (source: Massoglia and Uggen 2010)

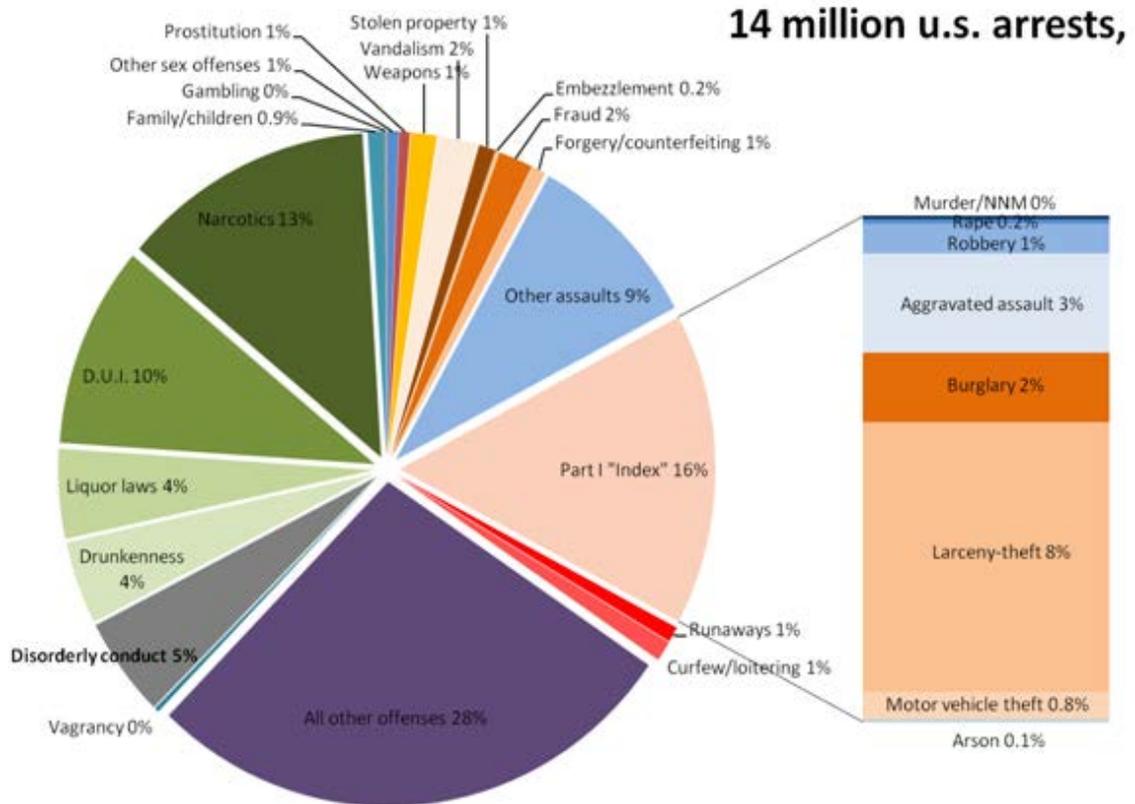
This line of research led to an ongoing project investigating how institutions affect the transition to adulthood: the Minnesota Exits and Entries Project. Like many desistance projects, the study targets people leaving prison between the ages of 18 and 25. To provide a more comparative perspective on reentry, however, we are comparing the experiences of the ex-prisoners with individuals leaving jail, juvenile corrections, mental health treatment, drug treatment, foster care, and the armed forces. We have thus far seen more commonality between these groups than one might anticipate, although the correctional groups have been more likely to be re-incarcerated. Nevertheless, there is also great fluidity *across* these groups – a participant might begin in foster care, then do time in a juvenile correctional facility or drug treatment center, before eventually winding up in the county workhouse or state prison. It thus became very difficult to isolate these treatment settings from corrections, especially when so many clients enter treatment

institutions through the criminal courts. The “sticky” criminal label has thus been affixed to a broader set of institutions and their clients.

### **Stickiness and Marginality**

In contrast to the relative fluidity of criminal offending, criminal records are notoriously “sticky.” We will argue, however, that these criminal records are growing increasingly stickier with each passing year. In Erving Goffman’s terms, those who cannot hide a stigmatizing characteristic are considered “discredited,” in contrast to “discreditable” individuals whose stigmatizing information can be concealed in interaction. As criminal records have become cheaper and more widely accessible in recent years, millions have moved from the category of “potentially discreditable” to the category of “formally discredited.” It has now become normative for U.S. firms to conduct background checks, with over 60 percent of employers indicating that they always check the criminal backgrounds of applicants (Raphael, 2010; Society for Human Resource Management, 2010). These checks often yield information on arrests as well as convictions, such that applicants for housing and employment must now routinely account for misdemeanor arrests that were never prosecuted. At the same time, we have witnessed a corresponding explosion in the creation of such records. Robert Brame and colleagues (2014) now estimate that 30 percent of Americans are arrested by the age of 23, a number that increases to 49% for African American males.

While felony-level criminal records are quite consequential in hiring and other areas (see, e.g., Devah Pager’s experimental audit studies (2007)), there has been far less research on more common or prosaic misdemeanor arrests. The figure below shows a breakdown of the 14 million U.S. arrests in 2007. Only about 16 percent involved the Uniform Crime Reports Part I “index” offenses shown in the breakout section of the pie chart in Figure 5. The green-shaded area represents the much larger proportion of substance use and drug law violations, while the purple-shaded region represents a mix of minor and miscellaneous offenses such as trespassing. About 5 percent of the total arrests involve disorderly conduct, the low-level offense we chose to examine in our study.



**Figure 5: The Offense Distribution of U.S. Arrests, 2007 (adapted from Uggen et al. 2014)**

As with incarceration, arrest is quite unevenly distributed by race. We compared arrest and imprisonment rates in the state of Minnesota, where we conducted our audit study. The annual American Indian and Alaskan Native arrest rate was an astounding 158 per thousand in 2007 and the African American arrest rate was even higher, at 227 per thousand that year. The latter figure is over 16 times the corresponding African American imprisonment rate and about 7 times the rate of arrest for Whites and Asian Americans. Because some individuals are arrested multiple times per year, this does not correspond to 22.7% of all African Americans being arrested. Nevertheless, arrest records affect a very large share of the total African American and American Indian populations.

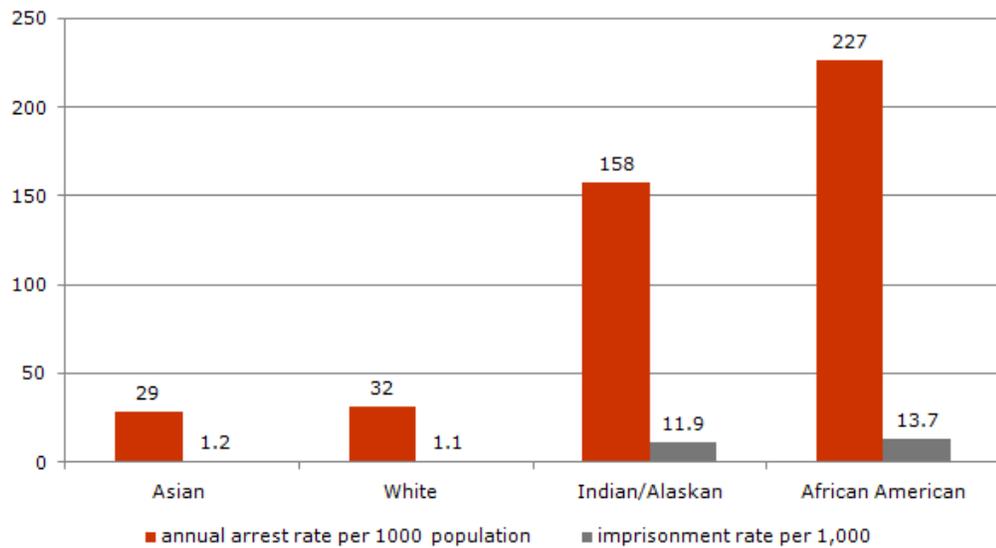


Figure 6: Minnesota Arrest and Imprisonment Rates, 2007 (adapted from Uggen et al., 2014)

We sent matched pairs of young men to apply for 300 entry-level jobs in Minnesota, assigning one member of the pair a three-year-old disorderly conduct arrest (Uggen, Vuolo, Lageson, Ruhland, and Whitham 2014). The figure below shows the no-record (control) and arrest record (treatment) for our White and African American pairs. There was about a four percentage point difference between the control and treatment groups in the rate of positive “callbacks” by employers – a much more modest effect than Pager observed for felony prison records. Nevertheless, the minor arrest record caused a 15% drop in the likelihood of callback for African Americans and an 11% drop for Whites.

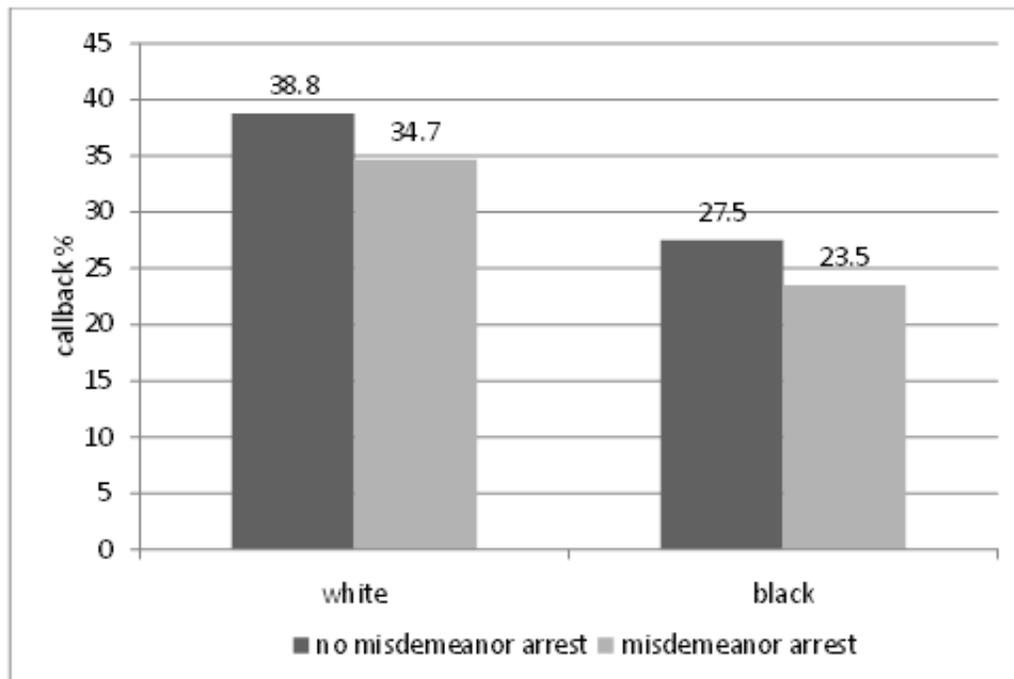


Figure 7: Employer "Callbacks" by Race and Arrest Record (adapted from Uggen et al., 2014)

Younger cohorts must now navigate a world in which stigmatizing information about themselves is increasingly accessible to potential employers. In contrast, the first author's own arrest records were largely invisible to the University of Wisconsin when he applied as a student in the 1980s -- and they were largely invisible to the University of Minnesota when he applied for a faculty position in the 1990s. Today, this situation has changed dramatically and has made the mark of a criminal record -- or even an arrest record -- all the more "sticky."

### More People with More Records

The story of the American punishment boom has been well-documented by many sources. As the figure shows below, the number of people under correctional supervision (prison, jail, probation, or parole) grew from under 2 million in 1980 to over 7 million in 2010.

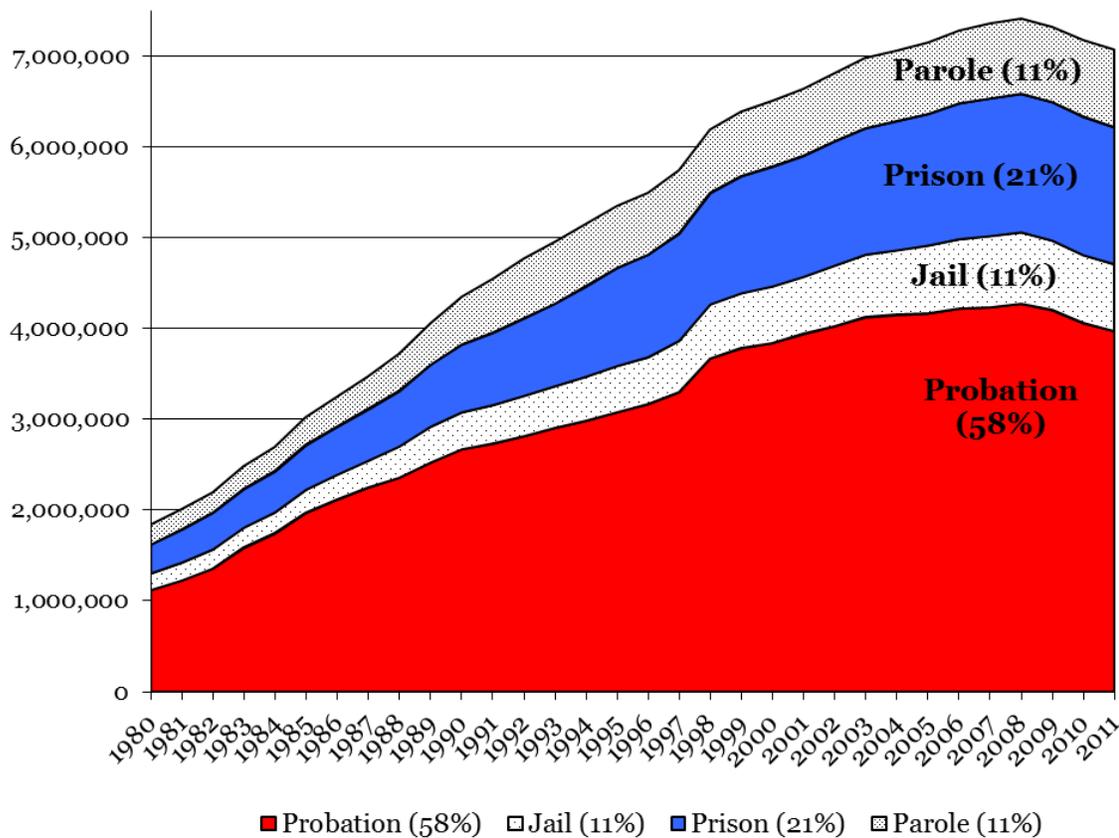


Figure 8: U.S. Correctional Populations, 1980-2011 (adapted from U.S. Department of Justice data)

With Sarah Shannon and several colleagues (2014), We have been developing estimates of the corresponding growth in the number of former felons. Our demographic life table estimates suggest that there are approximately 20 million people in the United States who have been convicted of felonies – about 5 million are currently under correctional supervision and about 15 million have a felony-level conviction history but have completed their sentences.

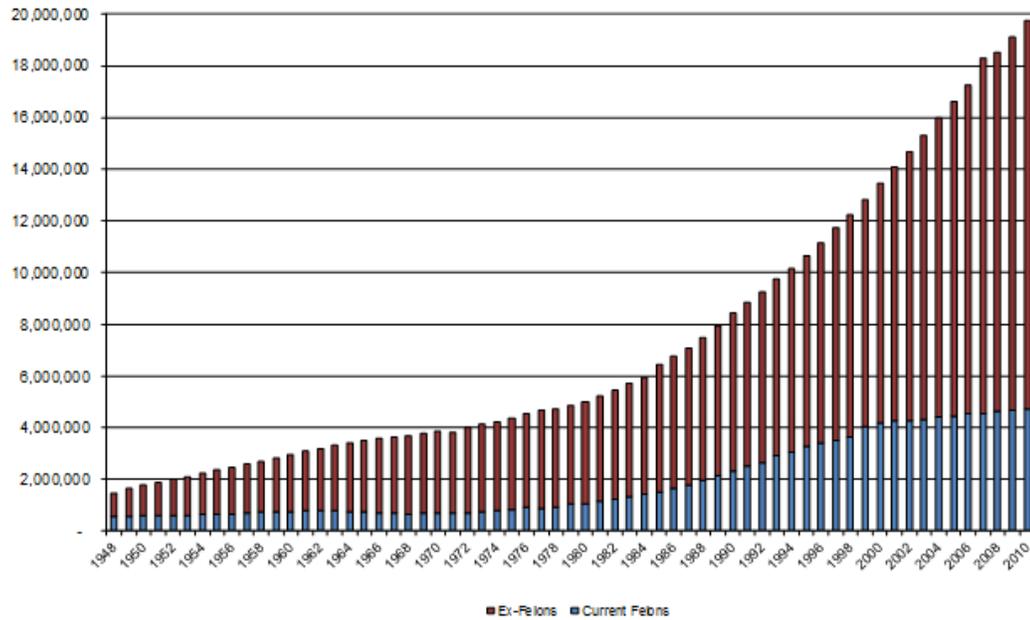
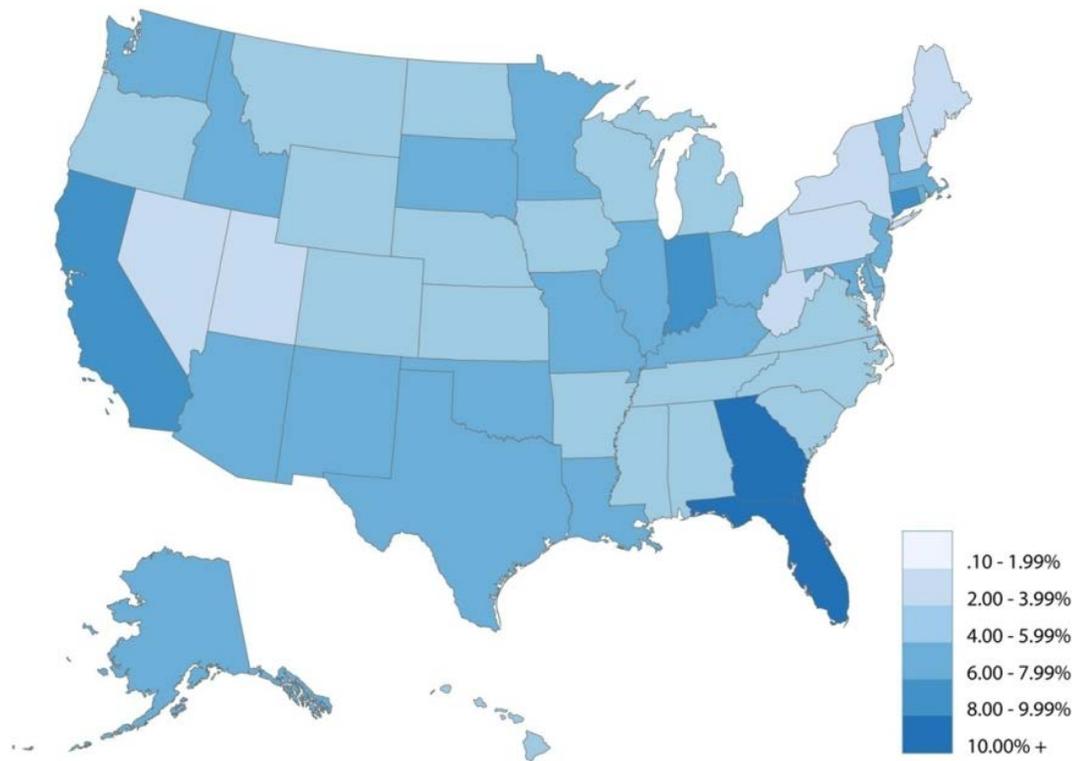


Figure 9: Number of U.S. Citizens with a Current or Past Felony Conviction, 1980-2010 (source: Shannon et al. 2014)

The story of these sticky records is both racial and spatial. We estimate that in 2010 about 6.4 percent of the U.S. adult population shared a felony conviction history. As seen in the figure below, this rate was far higher in states such as Georgia and Florida, relative to Northeastern states such as Maine, New Hampshire, and New York. In Florida (12.6 percent) and Georgia (11.4 percent), more than 10 percent of the total adult population had spent time under correctional supervision for felonies in 2010.



**Figure 10: Spatial Distribution of U.S. Felon Population as Percentage of Voting Age Population**  
(source: Shannon et al., 2014)

For at least the past 160 years, African Americans have been incarcerated at disproportionately high rates in America. The next figure shows the rate of African American ex-felons. In all states, at least 5 percent of the adult African American population had been under felony supervision in 2010. Moreover, 12 states had African American ex-felon rates in excess of 20 percent, meaning that one in five African American adults in these states had at some point been under felony supervision (California, Connecticut, Florida, Indiana, Kansas, Massachusetts, New Jersey, New Mexico, Ohio, Oklahoma, Rhode Island, and Washington).

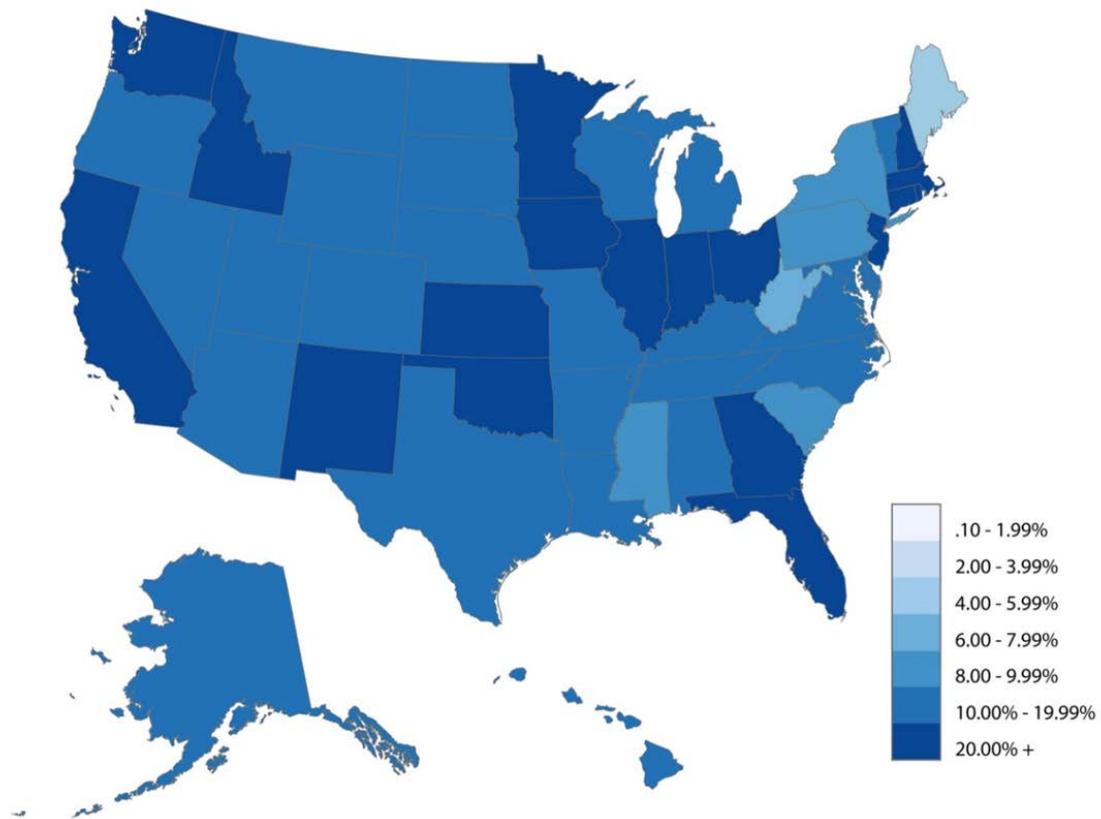


Figure 11: Spatial Distribution of African American Felons as Percentage of Voting Age Population (source: Shannon et al., 2014)

The combination of more people with records and greater public visibility of these records exerts “spillover effects” on a great range of social institutions – including labor markets, political institutions, health care, education, and housing markets. For example, Jeff Manza and Chris Uggen have shown how felon disenfranchisement affects election outcomes (2002; 2006). An ongoing project with Jason Schnittker examines how the density of former prisoners in an area affects the health choices of all citizens – everything from annual testing to the availability of mammograms. The larger the number of ex-prisoners in the population, the greater the percentage of uninsured individuals, the greater the number of emergency room visits, and the fewer hospital beds available. By virtue of these spillovers, criminal labels thus affix themselves to broader communities and constituencies, as well as individuals convicted of crime.

## Reintegrative Strategies versus “Piling On”

So how might we better intervene to capitalize on the fluidity in criminal offending? During the recession of the 1970s, the National Supported Work experiment provided jobs to those leaving prison and drug treatment. Sarah Shannon and Chris Uggen reanalyzed the data (2014) and found that those given jobs had a significantly lower rate of arrest than the randomly assigned control group. After 18 months in the program, about 74% of the treatment group had yet to be arrested, relative to about 68 percent of the controls.

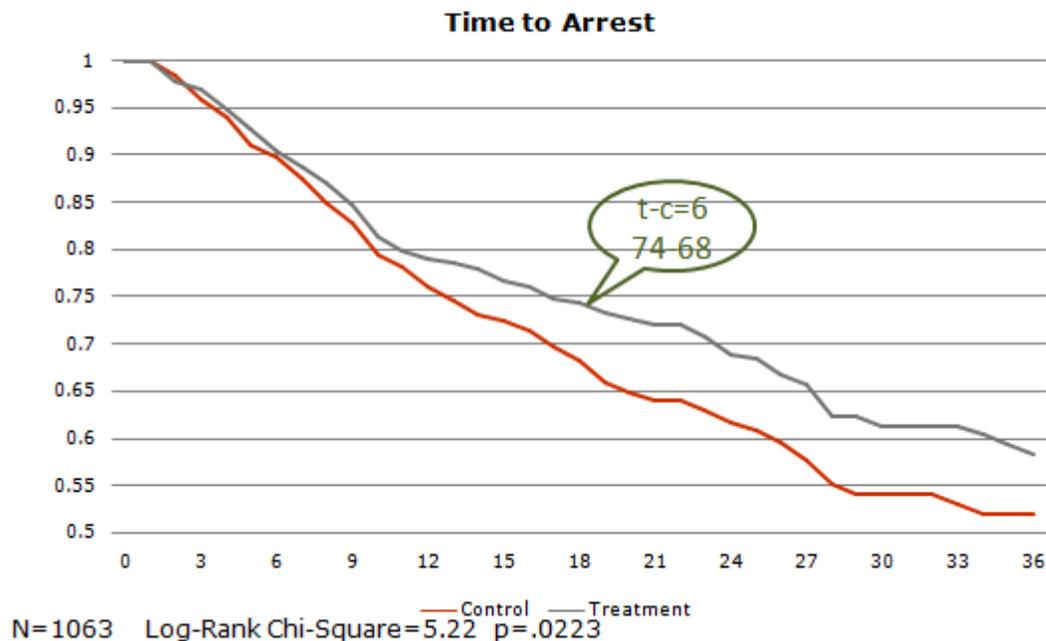
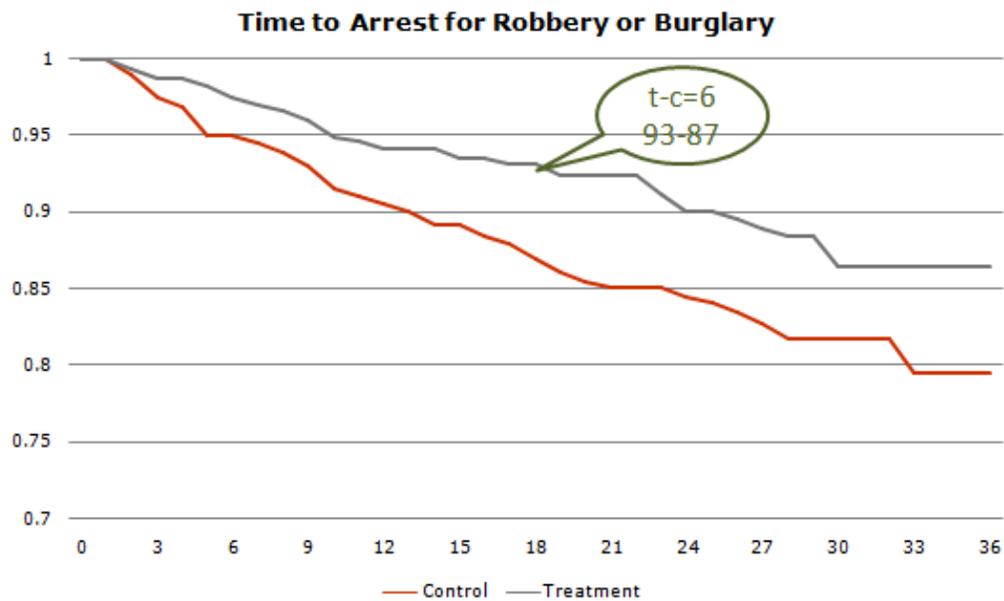


Figure 12: Time to Arrest among Drug Treatment Group (adapted from Uggen and Shannon 2014)

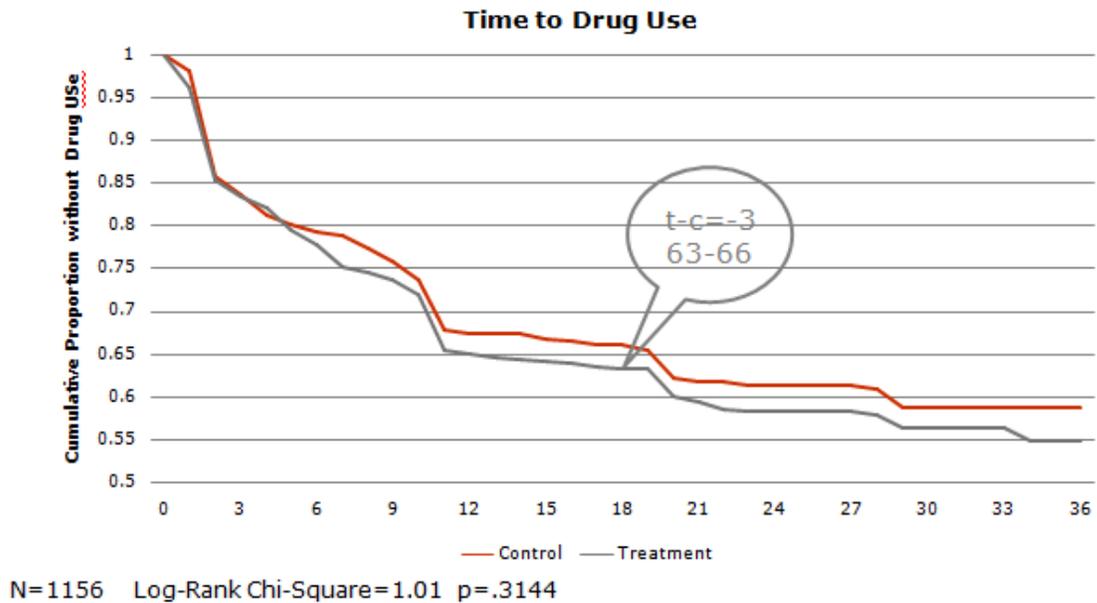
Of course, people can be arrested for many offenses. We were especially interested in whether the jobs reduced more predatory crimes such as robbery and burglary. Indeed, providing a basic entry-level job almost cut the rate of robbery and burglary arrests in half among these former drug users – a 46 percent reduction.



N=1063 Log-Rank Chi-Square=9.12 p=.0025

**Figure 13: Time to Robbery/Burglary Arrest (adapted from Uggen and Shannon 2014)**

As criminologists, we do not often find randomized experiments that yield a 46% reduction in offending. Why has the program's success not been more widely reported and emulated? The answer lies in the next chart, which shows the time until cocaine and heroin were used among these same participants. As this chart demonstrates, the program had no effect on drug relapse. If anything, those who were working in the program jobs relapsed at a somewhat quicker rate than the control group.



**Figure 14: Time to Cocaine or Heroin Use (source: Uggen and Shannon 2014)**

This pattern of results raises an absolutely critical policy question: is it wise to invest in employment programs that reduce crime, even if participants may spend some of their earnings on drugs? This is the fulcrum of debates over “harm reduction” programs more generally, such as the controversial choice between “wet” programs and more traditional “dry” approaches that enforce abstinence-only policies. By opening work and housing opportunities to a broader set of clients, perhaps such harm reduction efforts can facilitate a transition from a sticky and totalizing criminal label to one that more accurately reflects the complex and transitional nature of the desistance process.

While supported employment might serve as an example of reintegrative interventions, other policy interventions have been far more stigmatizing. With Melissa Thompson, we have been examining restrictions on public assistance for those individuals convicted of drug felonies. Since 1996, U.S. states could modify or opt out of this federal ban on public assistance for drug felons. We are now examining how this intervention affected female arrest rates. The next figure shows the total female arrest rate before and after states imposed the ban. We observed a sharper increase in female arrests among states that imposed the full ban relative to those that opted out or imposed a partial ban.

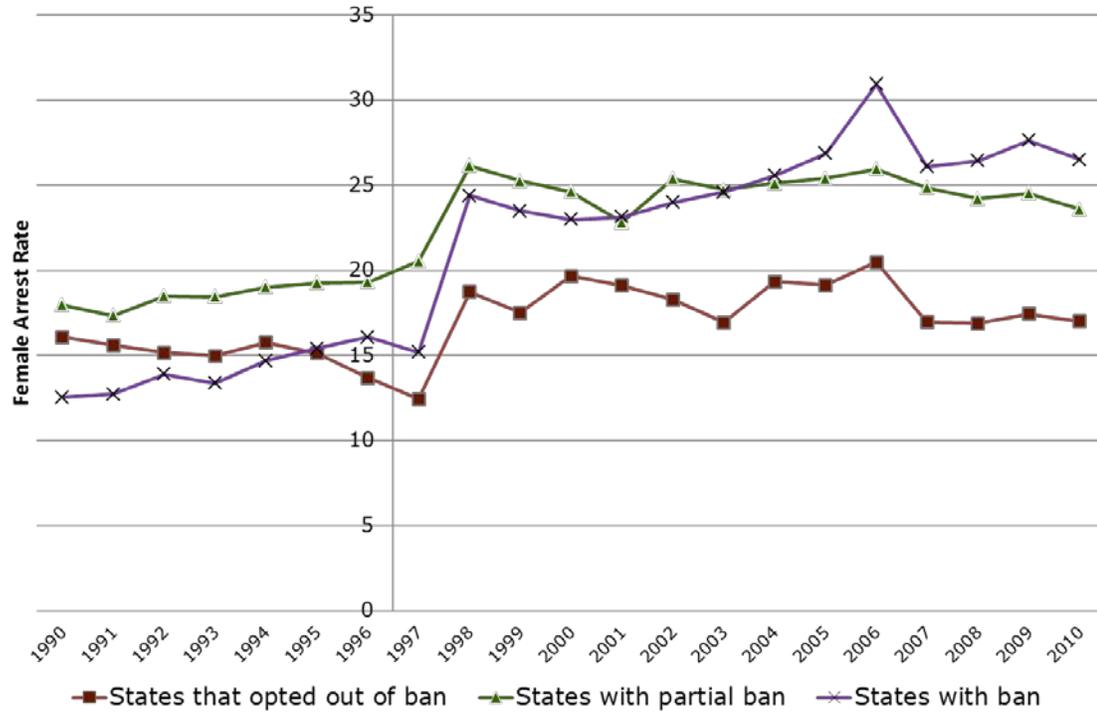


Figure 15: Female Arrest Rates by Welfare Ban Implementation (source: Thompson and Uggen 2013)

We saw this pattern for property arrests and, particularly, for violent arrests, as shown in the chart below. The female violent arrest rate rose at a much steeper rate immediately after the 1996 changes took effect.

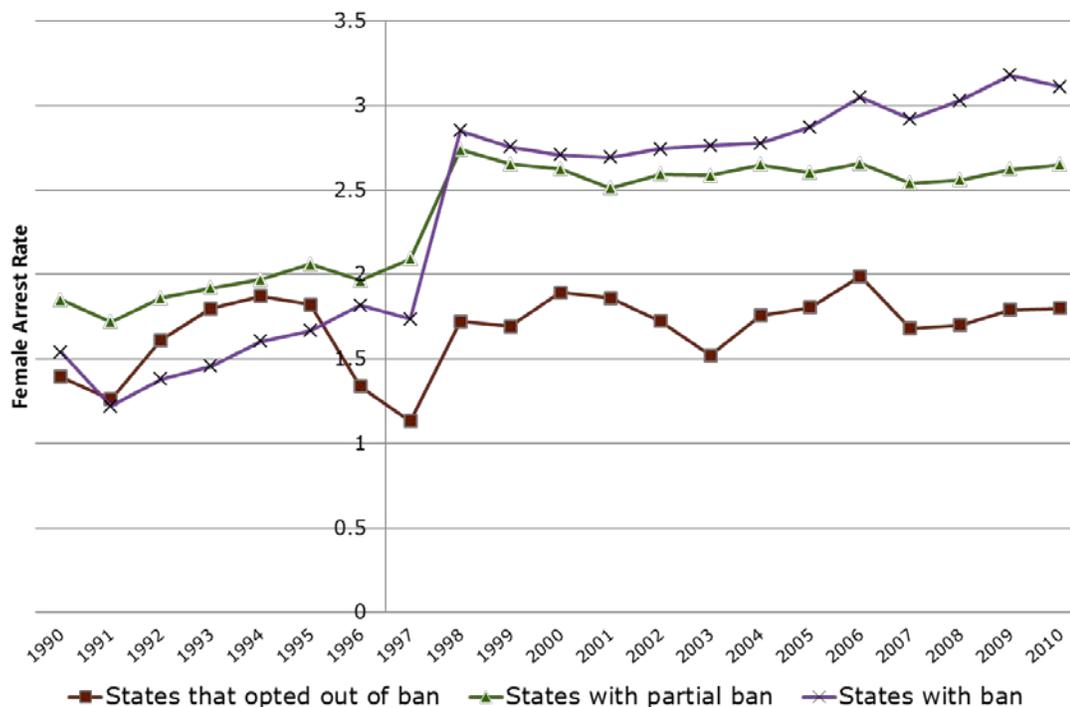


Figure 16: Female Violent Arrest Rates by Welfare Ban Status (source: Thompson and Uggen 2013)

This pattern of results implies that the change was consequential. The only type of crime that was clearly *unaffected* by the felony drug ban was the drug arrest rate. For all other categories, we saw an increase in female arrests among states that cut the benefits of people who had been convicted of drug crimes. When we first presented this information to a group of economists, they were initially quite skeptical of the story that a welfare ban could increase arrests. Some found it easier to understand when we asked which group of recipients we would cut off if we had intended to *increase* crime. Wouldn't we target those with the greatest "criminal capital" and networks for illegal activity? If our goal is instead to hasten desistance, we would really want to reduce these unnecessary collateral sanctions. We refer to policies such as the welfare ban as "piling on" because they lack a meaningful crime control function or motivation (see Uggen and Stewart 2015). In American football, "piling on" occurs when one or more players jumps atop a downed player after a tackle has been made. It is illegal because it is unnecessary, slows the progress of the game, and often results in serious injury. We might also think of "piling on" in terms of the thick stack of labels stubbornly affixed to so many domains of social life – from employment, to education, to public assistance, to online dating, to family relationships, to housing, to restrictions on physical movement, to voting, to volunteering, and to other public service (Uggen and Stewart 2015).

## New Models

After two decades of studying crime and desistance in the United States, we have become increasingly convinced of the need for more radical ideas and approaches. With Hollie Nyseth Brehm and Damas Gasanabo (2014), we have begun a project in Rwanda, a nation that experienced a devastating 1994 genocide that left a million of its 7 million citizens dead. We analyzed the 1.96 million cases in the hybrid *gacaca* court system devised by the nation to try over 60,000 perpetrators, 577,000 killers, and 1.3 million other individuals who were accused of property offenses during the genocide. Rwanda's devastated legal infrastructure could never process so many cases, so the *gacaca* courts adapted a traditional restorative justice practice based on elected lay judges and a mixture of restorative and punitive sanctions.

For property offenses, we found that about 87 percent of those found guilty were fined (Brehm, Uggen, and Gasanabo 2014). The *gacaca* courts also used apologies, negotiated settlements, agreements, and restitution as sentences for these crimes. For those who planned the genocide, the modal sentence length was 25-30 years in prison. For killing, the modal sentence length ranged from 10 to 15 years in prison. More so, 29 percent of these convicted individuals were eligible for early release (up to a 50 percent reduction of their sentence). Although the *gacaca* process has been criticized for not meeting the due process standards of the liberal legal model, it is likely underappreciated for its ability to do justice with relatively few resources. It is clearly a promising model for other cases of mass atrocity, but elements of the *gacaca* system may also be a useful model for community courts or other restorative justice settings. Importantly, Rwanda has experienced an astounding *decarceration* since the genocide, which has been accompanied by relatively little social disruption. The figure below shows the estimated peak rate of incarceration at 3,500 per 100,000 in the wake of the genocide – a figure that overwhelms even the outsized US prison incarceration rate by a factor of 7. Only twenty years past the genocide, is it possible that the label of “genocide perpetrator” is less sticky in Rwanda than the label of “criminal” in 21<sup>st</sup> century America?

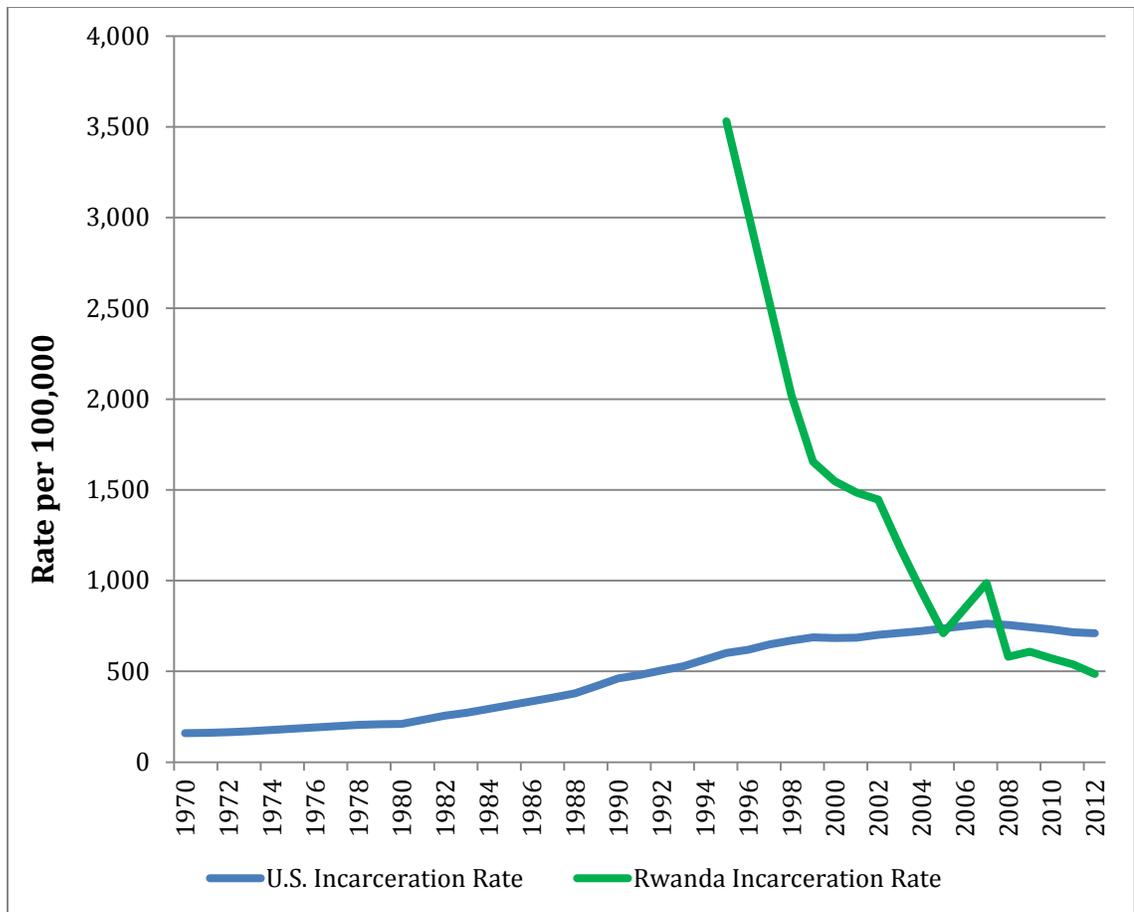


Figure 17: Estimated Incarceration Rates in the U.S. and Rwanda (source: Brehm and Uggen 2014)

## Conclusion

As we learn more about desistance patterns, the old “two kinds of people” argument has become increasingly untenable. We criminologists now spend our time thinking about how to effect or smooth transitions, rather than how to identify individual offenders and quarantine them from non-offenders. The time has thus come for a reasoned critique of excess punishment – and greater scientific and policy acknowledgement that criminal labels need not be so sticky.

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