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Policy Implications of Contemporary Labeling Theory Research

ABSTRACT

Labeling theory is a criminological theory that contends that formal sanctions amplify, rather than deter, future delinquent and criminal behavior. This paper identifies and describes some of the policies and programs that labeling theorists suggest would be effective at reducing delinquency and crime, or at least mitigate the effects of negative labeling experiences. The findings of contemporary examinations of juvenile delinquency and crime are briefly reviewed to provide the context for a variety of proposed policy implications. Programs such as family counseling, the Inviting Convicts to College Program, and Multisystemic Therapy are highlighted, and the importance of promoting education and employment for labeled individuals is discussed.

Keywords:

labeling, delinquency, criminal behavior, recidivism

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Introduction

Criminological theory guides public policy and programming discussions. Theory informs policy, policies are crafted based on empirical evidence, and then policies are evaluated based on their effectiveness (Adler, Laufer, & Mueller, 2012; Akers, Sellers, & Jennings, 2016; see also, Tonry, 2010). Labeling theory, rooted in sociology's symbolic interactionism perspective, is no different. Labeling theorists assert that policies are implemented to address social conditions collectively defined by society as problems (Blumer, 1971; Hilgartner & Bosk, 1988). Blumer (1971) argued that social problems, and their remedies, exist in how they are defined by society. Juvenile delinquency and crime have long been viewed as social problems, and "get tough" approaches to crime-control have dominated public discourse about how to address these problems (Bernard, 1992; Butts & Mears, 2001). Labeling theory serves as a stark alternative to other conventional criminological theories in how it defines deviance and how to address juvenile delinquency and crime from a policy perspective. Rather than crime-control through formal social control and "get tough" approaches to punishment, labeling theory suggests that crime and delinquency are reduced by stymying secondary involvement in deviance through reintegration efforts, diversion, de-labeling, promoting pro-social identities, and nonintervention (Becker, 1963; Farrington & Murray, 2014; Matsueda, 2014; Walters, 2016).

There was a time when labeling-inspired policies of diversion were widely implemented by lawmakers and criminal justice practitioners. The popularity of labeling theory decreased when diversion attempts seemingly failed to have the intended effects, and instead lead to net-widening (Akers et al., 2016). However, net-widening was an unexpected consequence of how policies and programs were implemented, and should not be ascribed to labeling theory. Nonetheless, the failure of diversion in the 1970's was attributed to labeling theory (Akers et al., 2016), and highly punitive "get tough" approaches have dominated criminal justice policy for much of the last few decades (Andrews & Bonta, 2010; Butts & Mears, 2001).

In this "get tough" era of criminal justice, labeling theory has been regarded with skepticism and guided largely by its critics (Matsueda, 2014). This trend continues into contemporary times. For instance, Akers and colleagues (2016) are extremely critical of labeling theory, but focus exclusively on original explications that emphasized identity change as the deviance amplification mechanism. More recent elaborations of the labeling perspective argue that labeling amplifies subsequent deviance through multiple intervening mechanisms, only one of which is identity, and that this process is conditioned by a host of potential contingencies such as race and stakes in

conformity (Paternoster & Iovanni, 1989; see also Barrick, 2014). Employment, education, and peer groups all serve as alternative intervening mechanisms that may influence the relationship between formal labels and subsequent delinquency (Barrick, 2014; Bernburg & Krohn, 2003; Bernburg, Krohn, & Rivera, 2006; Paternoster & Iovanni, 1989).

These theoretical elaborations have noteworthy empirical support. Restivo and Lanier (2013) found that official criminal justice intervention leads to an increased deviant identity, decreased pro-social expectations, and an increased association with deviant peers. Furthermore, they found that these effects were significantly associated with an increased likelihood of engaging in subsequent delinquency. Their findings are similar to others that have also found relationships between formal labeling and delinquent peers (Adams, 1996; Bernburg et al., 2006). Widdowson and colleagues (2016) found that arrests serve as a "negative turning point" in juveniles' educational trajectories (Widdowson, Siennick, & Carter Hay, 2016, p. 621). Likewise, Bernburg & Krohn (2003) found that formal labeling increased subsequent delinquency and that the relationship is mediated by employment and educational success. A multitude of scholars have found that formal labeling negatively impacts subsequent education and employment outcomes (Bernburg & Krohn, 2003; Fields & Emshwiller, 2014; Ispa-Landa & Loeffler, 2016; Lopes, Krohn, Lizotte, Schmidt, Vasquez, & Bernburg, 2012; Pratt, Barnes, Cullen, & Turanovic, 2016; Raphael, 2014; Sweeten, 2006). Essentially, there is a substantial amount of empirical support for the proposition that various intervening mechanisms mediate the relationship between formal labeling and subsequent delinquency.

The results of many 21st century examinations of juvenile delinquency and crime have been supportive of labeling theory. More specifically, contemporary labeling theory research has found that formal labels significantly amplify subsequent involvement in delinquency and criminal behavior (Bernburg & Krohn, 2003; Bernburg et al., 2006; Besemer, Farrington, & Bijleveld, 2017; Chiricos, Barrick, Bales, & Bontrager, 2007; Kavish, Mullins, & Soto, 2016; Krohn, Lopes, & Ward, 2014; Liberman, Kirk, & Kim, 2014; Lopes et al., 2012; Murray, Blokland, Farrington, & Theobald, 2014; Restivo & Lanier, 2013; Slocum, Wiley, & Esbensen, 2016; Wiley & Esbensen, 2013). Other theorists have also found that official intervention can have deviance amplifying effects, especially for chronic offenders (Morris & Piquero, 2013). These studies have found that official contact with police, arrests, and formal adjudications all increase future deviant behavior. In fact, Wiley and Esbensen's (2013) findings suggest that the influence of negative labeling becomes more pronounced as the severity of criminal justice contact increases. While labeling theorists have primarily focused on formal labeling measured by criminal

convictions, Wiley and Esbensen's (2013) findings suggest that even less severe labels, such as an arrest or initial contact with police, may also carry extreme negative consequences.

Labeling theory has not focused solely on juveniles. The theory is just as salient for studying younger individuals transitioning into adulthood (Besemer et al., 2017; Chiricos et al., 2007; Kavish et al., 2016). For instance, Chiricos and colleagues (2007), in a sample of adults above the age of seventeen, found that formal adjudication is more likely than withholding adjudication to result in deviance amplification (Chiricos et al., 2007). Likewise, Besemer and colleagues (2017) examined adult offending using labeling theory and found that convictions influenced individual's self-reported offending afterward. Kavish and colleagues (2016) also did not limit their sample to individuals legally designated as juveniles. Contemporary labeling theory research has made it clear that evidence of deviance amplification extends well beyond juvenile populations. After all, Mead (1934) argued that the social construction of the self is an on-going, life-long process. Therefore, the policy implications of labeling theory should not be limited to only juvenile populations.

The findings of these recent labeling theory studies provide the context for a few policy implications. If the goal of policies is to reduce recidivism and secondary offending, then criminal justice policies should focus on improving the employment and educational success of labeled individuals. The majority of arrested juveniles are referred to courts for further formal processing (Puzzanchera, 2014). Similarly, about half of those arrested for crimes as juveniles are convicted in adult criminal court, thus, arrests serve as a gateway to juvenile delinquent dispositions and adult criminal convictions. In fact, an arrest alone is enough to impact future educational and occupational success (Fields & Emshwiller, 2014; Krohn et al., 2014; Pratt et al., 2016). If conventional employment and educational opportunities are blocked, then deviant identities may be reinforced, and individuals may be more likely to recidivate.

This paper seeks to bridge the gap between the aforementioned findings of contemporary examinations of labeling theory and criminal justice policy. Labeling theory is too often associated with deinstitutionalization, diversion, and radical nonintervention (see Akers et al., 2016). While Schwalbe and colleagues' (Schwalbe, Gearing, MacKenzie, Brewer, & Ibrahim, 2012) meta-analysis concluded that no intervention might just be the best intervention for diverted juveniles, policy discussions rooted in the labeling research must continue to evolve as theorists continue to elaborate on the perspective. The following discussion will identify and describe a wide range of policies and programs that seek to address the application of formal labels and their ramifications on future

criminal and non-criminal outcomes. The policy implications of contemporary labeling theory research fall into five distinct categories: increased education and employment opportunities, multisystemic therapy, non-judicial processing, deferred adjudication, and increased public awareness. Answering Farrington and Murray's (2014) call for suggestions on how to reduce offending, these broad categories represent promising avenues of policy-making and programming that attempt to minimize the influence of negative formal labels on subsequent criminal offending.

Policy Discussion

Increased Education and Employment Opportunities

The stigma associated with formal labeling can have a multitude of negative consequences for individuals. Formal labeling can change a person's self-concept (Cooley, 1902; Mead, 1934), they may be subjected to more surveillance and social control than non-labeled individuals (Becker, 1963), and it can have dramatic impacts on a person's future employment success and earnings (Grogger, 1995; Nagin & Waldfoegel, 1995; Pager, 2003; Western, Kling, & Weiman, 2001). The stigma of a formal label leads many employers to view labeled individuals as untrustworthy (Holzer, Steven, & Michael, 2007; Schmitt & Warner, 2010), even though research has found that formally labeled employees are less likely to engage in workplace crime than non-labeled employees (Blumstein & Nakamura, 2009). The influence of negative labels on employment cannot be ignored when coupled with the fact that minimal employment earnings and occupational hardships are consistently linked with involvement in crime and recidivism (D'Alessio, Stolzenberg, & Eitle, 2013; Gould, Weinberg, & Mustard, 2002; Grogger, 1998; Needels, 1996). Thus, policies should be implemented that seek to minimize the social stigma associated with negative formal labels and improve the occupational success of labeled individuals.

Some policies and programs already exist that attempt to minimize the impact of formal labeling on the identities, and subsequent employment and education of individuals. One example is fair hiring policies such as states with statutes that "ban the box." States that "ban the box" prevent employers from inquiring about the criminal backgrounds of job applicants. These policies are designed to provide individuals with criminal backgrounds an equal opportunity for employment. "Ban the box" policies have not been examined thoroughly enough to say whether they definitively "work," but contemporary research does indicate they hold promise. For instance, Jackson and Zhao (2017) found that Massachusetts' "ban the box" reform

resulted in small but significant reductions in criminal recidivism. Similarly, Denver and colleagues (Denver, Siwach, & Bushway, 2017) found that formally labeled individuals cleared to work by the New York Department of Health were significantly less likely to be rearrested than if they had not been cleared to work. Finally, and in line with the labeling perspective, D'Alessio and colleagues (D'Alessio, Stolzenberg, & Flexon, 2014) found that Hawaii's "ban the box" law reduced social stigma during the hiring process and was extremely successful in reducing recidivism.

There is little to no downside to implementing "ban the box" policies. They are merely an attempt to minimize employment discrimination, and at worst, cost employers a minimal amount of money to run their own background investigations (Henry & Jacobs, 2007). Employers may not be able to directly inquire about an applicant's criminal background, but they are still free to run background checks at specified points in the employment process (D'Alessio et al., 2014). Thus, these policies may limit employment discrimination to a small degree, but they may only do so for entry level positions. As the prestige and income of an occupation increases, the likelihood of a background check will likely increase too. In sum, any effort to improve the employment prospects of ex-offenders should be lauded, and have little downside. However, more research is needed to determine how successful these policies are at reducing recidivism and improving the employment prospects for ex-offenders.

Another possible reform option would be to expand the use of federal grants and student loans for ex-offenders. Currently, drug offenders, certain sex offenders, and those in a United States federal or state institution are not able to get student loans or federal grants for education. Furthermore, many collateral consequences await ex-offenders that may limit where individuals may study, what individuals may study, and may also limit their employment prospects even if their education is completed. This, then, has a chain reaction of creating difficulties for ex-offenders attempting to repay student loans. Education is strongly correlated with reduced levels of offending (Chappell, 2004; Gordon & Weldon, 2003; Hrabowski & Robbi, 2002; Jenkins, Steurer, & Pendry, 1995; Mercer, 2009; MacKenzie & Hickman, 1998; Moody, Kruse, Nagel, & Conlon, 2008; Stevens & Ward, 1997), so the most obvious reform would be to provide federal funding and higher education opportunities for individuals while they are incarcerated.

Another option would be to partner community colleges and local colleges with federal and state institutions to provide an education for prisoners and also provide teaching

opportunities for undergraduate and graduate teaching assistants (Richards, Faggiani, Roffers, Hendricksen, & Krueger, 2008; Rose, Reschenberg, & Richards, 2010). The Inviting Convicts to College Program (ICCP) designed by the University of Wisconsin Oshkosh serves as a specific example of one such educational program that fits these parameters. The ICCP is an educational program that prepares individuals for the rigors of academic life so that those individuals will be more likely to succeed in their educational pursuits upon release (Rose et al., 2010).

Expanding the availability of federal funds for educating ex-offenders and implementing local programs such as ICCP help promote pro-social identities that may replace, or reduce the importance of, negative formal labels. Chassin, Presson, Young, and Light (1981) argued that an individual could possibly adopt a deviant identity in response to society's labels, but that the deviant identity may be unimportant in relation to that individual's self-concept (Chassin et al., 1981). Another possible alternative is that other interacting positive labels play a role in why a deviant label might not lead to secondary deviance (Kavish et al., 2016). Essentially, positive labels, such as "student," might play a role in explaining why someone labeled as deviant may not re-offend.

Multisystemic Therapy

Another possible alternative to arrest and incarceration would be to enroll detained juveniles in Multisystemic therapy (MST). This practice could still have potential labeling effects in its own right, but the severity of negative labeling would be limited to lesser labels with little to no legislated collateral consequences. MST is a type of therapy that is delivered while an individual is in the community that involves individual therapy for the client, as well as therapy that involves the family. Furthermore, therapists should have small caseloads to allow them to meet with their clients' families, peers, and schools. The goal of the therapist is to not only address the individual's current problems, but to also address issues that might arise in the future.

MST may be effective at reducing recidivism because it incorporates the significant others that are involved in an individual's life. Recent research suggests that reflected appraisals of delinquency from significant others precedes self-appraisals (Walters, 2016). Thus, how an individual thinks others view them may play a vital role in how that individual views himself or herself. Therefore, effective therapy treatment must target both individuals and their significant others. In essence, the goal of an MST program is to promote a pro-social identity (Borduin, Mann, Cone,

Henggeler, Fucci, Blaske, & Williams, 1995; Henggeler, Melton, & Smith, 1992; Levine, 2007). Research has found MST programs to be effective at reducing the likelihood of arrests, violent offending, and effective at promoting family cohesion and pro-social identities (Borduin et al., 1995; Curtis, Ronan, & Borduin, 2004; Henggeler et al., 1992; Van der Stouwe, Asscher, Stams, Dekovic, & Van der Laan, 2014). In fact, Sawyer and Borduin (2011) found that the effects of MST last into adulthood suggesting that MST results in an enduring positive change to individuals' identities. The consistent positive findings of MST evaluations suggest that it is an extremely promising alternative to criminal justice sanctioning.

Non-Judicial Processing

More programs and policies could be implemented to allow local jurisdictions to process arrested juveniles informally. Processing juveniles informally allows for the avoidance of further labeling, stigmatization, and more specifically in the case of older adolescents, the collateral consequences of official convictions. Only a small proportion of arrested juveniles are dealt with in an informal manner such as restorative justice programs, family counseling programs, or a transfer to some other social welfare agency (Puzzanchera, 2014). This could be changed with the expansion of local programs ran by police officials or prosecutors trained in restorative justice and community policing. Classes or programs could be established or expanded that inform juvenile offenders about how their crimes negatively impact their personal lives, families, and communities. Though non-judicial processing could trigger negative labeling, the label would be less formal than official processing, less severe than official adjudications, and would not be perceived by the public as radical non-intervention. Furthermore, these programs could provide opportunities for redemption, forgiveness, and maybe an opportunity to de-label arrested individuals.

One such non-judicial process that is promising is the practice of issuing civil citations. Civil citation laws provide local law enforcement with more discretion when dealing with juvenile offenders by allowing them to issue citations that provide youthful offenders with a means of disposing of their offense informally without the involvement of the juvenile court system. Thus, civil citations are a means for law enforcement to handle juvenile offenders without arrests or court referrals (Mears, Kuch, Lindsey, Siennick, Pesta, Greenwald, & Blomberg, 2016). One recent evaluation of a local civil citation program found a modest improvement in

outcomes compared to a comparison group of youth processed through the juvenile justice system (Sullivan, Dollard, Sellers, & Mayo, 2010). The Miami-Dade County Juvenile Services Department credits their civil citation program with a 15% reduction in arrests and cost savings derived from reduced paperwork, fewer arrests, and less court appearances (Walters, 2008). Thus, civil citation programs appear to result in the application of fewer negative labels and save local jurisdictions money associated with the costs of processing juvenile offenders. More evaluation studies are needed, but non-judicial processing practices, such as civil citation programs, appear to be a promising intervention for youthful offenders.

Deferred Adjudication

Widespread implementation of deferred adjudication programs and other first-time offender programs could have a profound influence on reducing recidivism and secondary offending. Deferred adjudication programs allow judges to sentence offenders to probation, but to withhold official adjudication until the completion of the sentence. If the sentence is completed successfully, then the offender can avoid official adjudication and the collateral consequences that accompany adjudication (Bontrager, Bales, & Chiricos, 2005; Chiricos et al., 2007). Not only do these programs provide individuals with a chance to avoid the collateral consequences of official adjudications, but the completion of probation could be perceived as a redemption and de-labeling ritual (Maruna, 2014). The expanded use of deferred adjudication programs allows for offenders to be punished with probation sentences, but simultaneously provides offenders with an opportunity to avoid the collateral consequences typically attached to such punishments. Chiricos and colleagues (2007) have already demonstrated the effectiveness of these programs in reducing recidivism among first-time offenders. The work of Maruna and colleagues (2001; 2011; 2014; Maruna, LeBel, Mitchell, & Naples, 2004; Maruna & LeBel, 2010), coupled with the findings of Chiricos and colleagues (2007), highlights deferred adjudication as a key practice that should be advocated for by proponents of labeling theory.

Deferred adjudication is somewhat common for the handling of juveniles, but the practice must be expanded for use with young adults and first time non-violent adult offenders. A constant feedback loop information system must be created to avoid problems of net-widening. Individuals must be tracked into the future so their progress can be evaluated, data must be collected and analyzed, and reports created that allow policy-makers to make rational and informed decisions (Gottfredson & Gottfredson, 1987). The

goals of deferred adjudication programs must be clearly stated and a concerted effort must be made to not simply supply new clients for the program. Rather, data must be tracked to ensure that individuals are being funneled from typical forms of formal processing, thus reducing the amount of offenders that are typically processed formally and ensuring that the new program is not simply being used to handle an increased number of clients.

Increased Public Awareness

Efforts should be made to educate schools and employers so that society is more receptive to employing and educating individuals that have been arrested or convicted for their prior criminal behavior. Individuals with criminal records face a host of legislated collateral consequences that impede their employment prospects and must deal with employers hesitant to employ people with criminal records (Holzer, Raphael, & Stoll, 2004; Pager, 2003; Pager, Western, & Sugie, 2009; Raphael, 2014; Solomon, 2012). The exact opportunities that would allow people to avoid becoming career criminals are widely restricted to arrested and convicted individuals, which in turn, increases the allure of and motivation for criminal behavior. Maruna and colleagues (2004) noted that many individuals rely on someone to vouch for their moral character during reintegration. Educating schools and employers of the hardships labeled people encounter could encourage others to be more willing to look past criminal pasts and vouch for labeled individuals. These “personal vouchers” (Maruna et al., 2004, p. 275; see also Maruna, 2001) provide access to conventional pro-social peer networks.¹

Unfortunately, the opportunities that are blocked for individuals convicted of crimes are not contained to occupational and employment circles. The relationship between education and crime is complex, to say the least, but more education is routinely related to less participation in crime and less recidivism (Chappell, 2004; Esperian, 2010; Lochner, 2007; Stevens & Ward, 1997). Yet, there are many obstacles that stand in the way of labeled men and women trying to advance their education. Individuals convicted of drug-related crimes in the United States face restrictions when applying for student loans and federal grants; a fact well known by any student that has applied for financial aid. People convicted of other crimes can be denied admission to college, barred from living in college dorms, denied campus employment, or admission into specific education programs. Labeled individuals that manage to graduate with four-year degrees continue to face obstacles in graduate school. Individuals with criminal records have been denied admission

to graduate school, graduate assistantships, fellowships, and PhD candidates with criminal records have even been denied the opportunity to defend their dissertations. These impediments to increasing levels of education extend into their future occupations when they might be denied tenure or an earned promotion because of their criminal pasts (Richards, 2013). Removing impediments to employment and education could go a long way towards reducing recidivism and improving the life-chances of criminally labeled individuals. Blocked opportunities like the abovementioned collateral consequences only serve to reinforce deviant identities, and according to labeling theory, a deviant identity may lead to subsequent deviant behavior (Becker, 1963).

Conclusion

In general, these policy suggestions are in line with the work of Maruna (2001; 2011) and colleagues (2004), Rocque and colleagues (2016), Braithwaite (1989), and Cullen and Jonson (2014). Their work calls for programs and policies that effectively aid in labeled individuals reintegrating with their local communities. They also reject “get tough” approaches to criminal justice that simply seek to punish and offer no chance for redemption or forgiveness. Redemption and forgiveness can go a long way in reinforcing pro-social identities and stymie the development of deviant identities theorized to lead to increased criminal involvement (Braithwaite, 1989; Cullen & Jonson, 2014; Latimer, Dowden, & Muise, 2005; Maruna & LeBel, 2010). Cullen and Jonson (2014) specifically argued that punishments that “exclusively” (Cullen & Jonson 2014, p. 79) seek to punish, and do not attempt to change the risk-factors for criminal offending, should be expected to have criminogenic effects. Punishments that do not reinforce pro-social identities, or include some form of evidence-based effort to rehabilitate and reintegrate individuals, should be expected to be criminogenic. Indeed, contemporary studies of juvenile delinquency and crime consistently show that contact with police, arrests, and formal adjudications increase subsequent criminal behavior. Therefore, criminal justice programs and policies must seek to mitigate the criminogenic influence of those official interventions.²

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Footnotes

1 Frank Tannenbaum, a pioneer of labeling theory, relied on individuals to vouch for his character after his release from prison (Yeager, 2011).

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