

**Sticks and Stones Will Break My Bones but Names May Never Not Hurt Me:  
Exploring emotions and self-stigma in living with a criminal record**

by

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## **Abstract**

In Canada, criminal records are a structural form of self-stigma, in that society's presumptions and negative stereotypes become internalized within those who have been labelled unworthy by their criminalization. The trend to politicize the risk of all people who have had a past interaction with the criminal justice system as dangerous has, with the help of various surveillance techniques, fostered a culture of control that limits people who have a criminal record from full integration into society. This thesis explores how people feel about living with a criminal record and the degree to which they experience self-stigma as a result. Through in-person interviews it found that men with criminal records experience feelings of fear, shame, alienation, sadness, and anger, and to some degree their agency and ability to integrate into society is limited as a criminalized person in Canadian society.

**Key words:** criminal records, criminalization, surveillance, culture of control, stigma, self-stigma, emotion, feelings, agency.

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Peace, and please be safe in all you do... Alan

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## Introduction

Terry Thomas explains that, in theory, “criminal records were once a discrete item of personal information held in conditions of confidence [...] used by the police and the judicial system for investigative or sentencing purposes [...] with] no one else very much interested in them”.<sup>1</sup> This general indifference to one’s past criminality is no longer the norm,<sup>2</sup> as Marc Shcuilenburg,<sup>3</sup> and George Rigakos<sup>4</sup> explain, society, from within a trend of increased securitization, demands to feel safe. However, this tendency that began with the supposed nonobtrusive application of surveillance techniques for the betterment of all has, as David Garland suggests, evolved into a culture of control.<sup>5</sup> It is within this context that I ask, for how long should this supposed utilitarian purpose of labelling people criminals apply, particularly when, as Joan Petersilla suggests, “a criminal conviction—no matter how trivial or how long ago it occurred—scars one for life”.<sup>6</sup> The media attention concerning the ‘benign’ criminal history of the country’s current Governor-General exemplifies this,<sup>7</sup> as an individual’s record of criminal and non-criminal activity is not just noteworthy but readily accessible.<sup>8</sup> Perhaps, for certain situations, as current legislation safeguards (e.g., long-term and dangerous offender designation),<sup>9</sup> a permanent label of past error might be in society’s best interests. However,

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<sup>1</sup> Terry Thomas, *Criminal Records: A Database for the Criminal Justice System and Beyond* (London: Palgrave Macmillan, 2007), at xi [Thomas].

<sup>2</sup> *Ibid* at 4.

<sup>3</sup> Marc Shcuilenburg, *The Securitization of Society: Crime, Risk, and Social Order*, in George Hall, trans., (New York: New York University Press, 2015), at 10.

<sup>4</sup> George Rigakos, *Security/Capital: A General Theory of Pacification* (Edinburgh: Edinburgh University Press, 2016).

<sup>5</sup> David Garland, *The Culture of Control* (Oxford: University of Chicago Press, 2001), at 2-3 [Garland].

<sup>6</sup> Joan. Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, (New York: Oxford University Press, 2003), at 19.

<sup>7</sup> Jordan Press, “Justin Trudeau won’t comment about Julie Payette’s background check”, *Global News* (2017), online: <<http://globalnews.ca/news/3610388/justin-trudeau-julie-payettes/>>.

<sup>8</sup> Canadian Civil Liberties, *What is a Criminal Record*, online: <<https://ccla.org/recordchecks/doc/What%20is%20a%20Criminal%20Record.pdf>>, [Canadian Civil Liberties].

<sup>9</sup> *Long Term Offender Designation*, online: <http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/protctn-gnst-hgh-rsk-ffndrs/lng-trm-ffndr-dsgntn-eng.aspx>, & *Dangerous Offender Designation*, online:

encumbering individuals with a criminal record, no matter the crime committed, might not be compulsory to keep society safer, and may in fact, have negative social impacts. This is demonstrated in part by the increased academic traction around the idea of a spoiled identity, where the stigmatized perception of inferiority places those affected by such negative attributes, like that of a criminal record, at a disadvantage, obstructing their full and successful integration and participation in society.<sup>10</sup> Furthermore, for historical context, in the 1800's, "the legislature of Upper Canada ensured that local courts had discretion to impose a moderate pecuniary fine rather than [some ...] other lasting mark of disgrace and infamy".<sup>11</sup> However, two-hundred plus years later, present Canadian policy is to brand those found guilty of a criminal offence with a criminal record, thus legislatively stigmatizing them as less worthy.

This thesis explores how it feels to bear the scars of such a criminal record, how it feels to be branded, but more specifically, it is a qualitative exploration into the self-stigmatizing process that concerns how individuals express, experience, and feel about having a criminal record. Before progressing into the complex ways of how the label of a criminal record can make people feel and influence their engagement within society, an outline of the process that structures the thinking of this project will be provided. After situating this research both in a personal and broader context, the first chapter is a literature review that explains the legal regulatory framework of criminal records, criminal record checks, and record suspensions within Canadian society. It postulates how an individual's agency or capacity to act independently and make choices of their own free-will,<sup>12</sup> is influenced by the social construction of criminalization.

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<<http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/protctn-gnst-hgh-rsk-ffndrs/dngrs-ffndr-dsgntn-eng.aspx>>.

<sup>10</sup> Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*, (New York: Simon & Shuster Inc., 1963), at 4 [Goffman 1963].

<sup>11</sup> Allan Manson, *The Law of Sentencing*, (Toronto: Irwin Law, 2001), at 15 [Manson].

<sup>12</sup> AK Thompson, "Agency", in *KeyWords for Radicals: The Contested Vocabulary of Late-Capitalist Struggle* (Chicago: AK Publishing, 2016), at 39-40 [Thompson].

As well, Western society's proclivity towards surveillance that has led to a culture of control facilitating the dissemination of criminal records and thus the experience of self-stigmatization by those who have them will be discussed. Also, this chapter details how people with criminal records may understand themselves emotionally within a self-stigmatizing process by taking into account the influence gender might have. The second chapter presents the theoretical framework guiding this research where symbolic interactionism, stigma and self-stigma, agency re-appropriation, and emotions are discussed. The third chapter focusses on methodology addressing the ontological, epistemological, and research question(s) of the project and explaining the entire research design. Chapter four contains the findings of the research and a discussion of how this information applies to the present field of knowledge. The final chapter concludes the thesis with an overview of what has been discussed, as well as, possible future areas of research based on the data gathered. The end product is, I hope, with the help of my research participants (Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor), a more fulsome understanding of how those who are encumbered by legislatively mandated criminal records feel and will help to inform those who read it that criminal records do more than what most people think they do.

### **Situating the Research**

For the purpose of this thesis, I ask you to imagine yourself like me, one of the four million plus Canadian citizens who is currently burdened by a criminal record.<sup>13</sup> In my situation, breaking the law was something I did 25 years ago, in the distant past of the person who I am today. After being found guilty within the workings of the criminal justice system and following

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<sup>13</sup> Jenna Freeman, "Ontarians with Criminal Records May be Able to Get Truck Driving Jobs", in *CBCNEWS*, online: <<http://www.cbc.ca/news/canada/kitchener-waterloo/former-offenders-to-get-ontario-truck-driving-jobs-1.3618747>>.

the conditions of my release, I believed myself (perhaps like the other twelve percent of the Canadian population who have been marked by past criminalization) free from further governmental oversight and able to put this incident behind me, hoping to get on with my life. However, living within a society insistent upon the dissemination of criminal records, the stigma of one's past interaction with the criminal justice system seems a debt to be forever repaid.<sup>14</sup> In Canada, for various purposes including: employment, adoption, international travel, volunteer work, citizenship, student placement, jury duty, and even house rental,<sup>15</sup> a criminal records check can be required. Some of these reasons have had a direct impact on how I navigate the society I live in as a criminalized person. One such example is found in my wanting to volunteer at my children's preschool. However, in order to do this, I had to get a criminal records check that involved going to a satellite office of the local police to have my fingerprints taken, a process that left me traumatized, feeling both saddened, ashamed, and angry. As I was unwilling to submit the outcome of the check to my children's school, I consequently missed out sharing in aspects of both my daughters' young lives. My aversion to disclosing this information was not entirely based on the reprisal of the perceived-stigma of having my past deviant behavior scrutinized by relational social peers,<sup>16</sup> although having the entire pre-school staff aware of the mistakes I had made in my past was still a contributing factor. Instead, I primarily blame the internalized negative beliefs of self-stigma that affect one's dignity and self-esteem as being reinforced through feelings of fear, shame, and sadness that prevented me from submitting the

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<sup>14</sup> James B. Jacobs. *The Eternal Criminal Record* (Boston: Harvard University Press, 2015) at 2 [Jacobs].

<sup>15</sup> Colin Perkel, "Odd rules: Witchcraft fakers, pot heads, liars all suitable for jury duty in Ontario", *National Post* (July, 2015) online: <<http://news.nationalpost.com/news/canada/odd-rules-witchcraft-fakers-pot-heads-liars-all-suitable-for-jury-duty-in-ontario>>; Ottawa Police Services/Service De Police Ottawa, "Crime free Multi-Housing", online: <<https://www.ottawapolice.ca/en/safety-and-crime-prevention/Crime-Free-MultiHousing.asp>> [Ottawa Police Services]; & Criminal Record and Vulnerable Sector Checks, online: <<http://www.rcmp-grc.gc.ca/en/criminal-record-and-vulnerable-sector-checks>>.

<sup>16</sup> Theodore Kemper, *Status, Power and Ritual Interaction: A Relational Reading of Durkheim, Goffman and Collins* (New York: Routledge, 2016), at 1.

results.<sup>17</sup> It is this intersection of stigma and criminalization, where human emotions overlap with legal structures, that is the academic nexus this thesis will explore.

Throughout this research my fingerprints will be found for two reasons: the first is to give insight where applicable on how people feel about the self-stigmatizing effects of their criminal records and how they might edit their lives accordingly, and the second for possible catharsis, as besides being an emotive understanding of self-stigma surrounding criminal records, this thesis is also a self-reflective undertaking in first-person action research, a method of academic inquiry and everyday enquiry that Barbara Bassot suggests is “at the heart of [...] life itself”.<sup>18</sup> To better understand this as a process of catharsis, consider George Rosenwald and Richard Ochberg’s proposition that those “who would free themselves of their own culture’s restrictions must find alternative conceptions of social engagement through which to develop their identities”.<sup>19</sup> However, when James Jacobs explains that criminal records have become the standard by which one’s public identity is filtered,<sup>20</sup> the words of Max Van Manen should be remembered, as he suggests:

To become more thoughtful or attentively aware of aspects of human life which hitherto were merely glossed over or taken-for-granted will more likely bring us to the edge of speaking up, speaking out, or decisively acting in social situations that ask for such action.<sup>21</sup>

Within this thinking, I want to contribute in some way to social justice reform by qualitatively building on the quantitative findings of Kelley More, June Tangney, and Jeffrey Stuewig, who

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<sup>17</sup> Patrick Corrigan, Jonathon Larson & Nicolas Rusch, “Self-stigma and the “why try” effect: impact on life goals and evidence-based practices”, in *World Psychiatry* Vol 8 No 2 (2009), at 75 [Corrigan, Larson & Rusch].

<sup>18</sup> Barbara Bassot, “Book Reviews”, in *Counselling and Psychotherapy Research*, Vol. 17, No. 4, (December: 2017), at 331.

<sup>19</sup> George C. Rosenwald & Richard L. Ochberg, *Storied Lives: The Cultural Politics of Self-understanding*, (Grand Rapids, MI.: Yale University Press, 1992), at 15.

<sup>20</sup> Jacobs, *supra* note 14, at 155.

<sup>21</sup> Max Van Manen, *Researching Lived Experience: Human Science for an Action Sensitive Pedagogy* (New York, State University of New York Press, 1990), at 154 [Van Manen].

explain that, upon conviction, existing stereotypes about criminal offenders may become integrated into one's self-concept, subsequently leading this self-stigmatizing process to be a robust predictor of poor functioning in society.<sup>22</sup> Adding to this literature, I endeavor to delve farther and perhaps more obtrusively into the lived experiences and subjective realities of those who navigate society with a criminal record on a daily basis. Their voices, thus far, seem missing from the present social dialogue, as they are drowned out by political rhetoric, false-fear, and indifference.

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<sup>22</sup> Kelly Moore, June Tangney, & Jeffrey B. Stuewig, "The Self-Stigma Process in Criminal Offenders", in *Stigma Health*, Vol. 1, No. 3, (August, 2016), at 206 [Moore, Tangney, & Stuewig].

## Chapter 1- Literature Review

David Boote and Penny Beile explain that “a researcher cannot perform significant research without first understanding the literature in the field”.<sup>23</sup> However, to better understand the competing interests between people with criminal records and those of society at large,<sup>24</sup> a comprehensive but selective investigation of the relevant literature on the subject should provide a more fulsome picture and also help uncover any gaps within the knowledge.<sup>25</sup> As such, this section is an iterative review of how a criminal record which was at first a localized juridical bookkeeping strategy, became not just the statistical precursor to “understand[ing] the criminal, long before the self-conscious enterprise of ‘criminology’ was invented”,<sup>26</sup> but moreover, developed into a nation-wide stigmatizing, normalizing, and controlling bureaucratic institution founded on the gathering of information.<sup>27</sup> Therefore, in order to better position the way in which criminal records and their dissemination contribute to how people understand themselves emotionally within a self-stigmatizing process, I explore Canada’s legal regulatory framework around criminal records, agency, criminalization, surveillance, the culture of control, stigma, emotion, gender, and masculinity. Each category presented represents a link within the chain of this paper’s argument; however, each, besides being its own concept, is only a possibility through its interaction with time and those theorists who have spoken to it.<sup>28</sup> As Sir Isaac Newton explained, he was only able to see further for having stood on the back of giants, so too,

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<sup>23</sup> David N. Boote & Penny Beile, “Scholars before researchers: On the centrality of the dissertation literature review in research preparation”, in *Educational Researcher*, Vol. 34, No. 6 (2005), at 3.

<sup>24</sup> Helen Lam Mark Harcourt, “The Use of Criminal Record in Employment Decisions: The Rights of Ex-offenders, Employers and the Public”, in *Journal of Business Ethics* Vol. 47 (2003) at 237.

<sup>25</sup> Duncan Branely, “Doing a Literature Review”, in Clive Seale (ed.), *Researching Society and Culture*; 4<sup>th</sup> Edition (London: SAGE Publications, 2012) at 64-65 [Branely].

<sup>26</sup> Robert Shoemaker & Richard Ward, “Understanding the Criminal: Record-Keeping, Statistics and the Early History of Criminology in England”, in *The British Journal of Criminology*, Vol. 57, No. 6, (1 November, 2017), at 1442.

<sup>27</sup> *Ibid*, at 1443.

<sup>28</sup> Duncan Branely, *supra* note 25, at 76.

does this thesis hope to build something more encompassing concerning how people feel about their criminal records from the individual parts that make up its entirety.

## 1.1- Legal Regulatory Framework

The maintenance of Canadian society requires a sound legal regulatory framework be created upon a constant evolution of jurisprudential thinking that draws its authority from the common law, *The Constitution Act*,<sup>29</sup> and the citizens of the electorate to which governmental regulations apply.<sup>30</sup> Additionally, such a framework is supposed to be one built upon a foundation of openness, transparency, and fairness. However, in regards to criminal records in Canada this might not always be the case.

### 1.1.1- Criminal Records

A definitive understanding of what a criminal record is, as explained by the Canadian Civil Liberties Association, is somewhat elusive, if not a misnomer in Canadian jurisprudence.<sup>31</sup> This is especially the case when those who have never been found guilty of a criminal offense can have a lengthy one.<sup>32</sup> However, as Thomas explains, besides their stigmatizing effect,<sup>33</sup> a criminal record is a file of a person's history that is both “used by the police and the judicial system for investigative or sentencing purposes”.<sup>34</sup>

In Canada, *The Identification of Criminals Act*,<sup>35</sup> authorizes the taking of fingerprints, photographs, and other measurements like DNA for “the purpose of affording information to

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<sup>29</sup> 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

<sup>30</sup> Patrick Fitzgerald, Barry Wright, & Vincent Kazmierski, *Looking At Law Canada's Legal System, 6<sup>th</sup> Edition*, (Markham: LexisNexus, 2010) at 28-29 [Fitzgerald, Wright, & Kazmierski].

<sup>31</sup> *What is a Criminal Record*, (The Canadian Civil Liberties Association: May, 2014) at 1 [*What is a Criminal Record*].

<sup>32</sup> *Ibid.*

<sup>33</sup> Thomas, *supra* note 1, at 2.

<sup>34</sup> *Ibid* at xi.

<sup>35</sup> RSC, 1985, c. I-1.

officers and others engaged in the execution or administration of the law”.<sup>36</sup> As well, both *The Criminal Records Act*,<sup>37</sup> and *The Youth Criminal Justice Act*,<sup>38</sup> subsumed under the auspices of *The Privacy Act*,<sup>39</sup> legislate a definitive bureaucracy to curate and disseminate any instances of past interaction with the criminal justice system.<sup>40</sup> Policing Support Services (PSS), the National Police Services (NPS), the Forensic Science and Identification Services (FS&IS), and the Canadian Criminal Real Time Identification Services (CCRTIS), all contribute to the Canadian Police Information Centre (CPIC): a computerized information system that stores and provides any information that has been accumulated about crimes, criminals, and other curiosities.<sup>41</sup> Since 1972, CPIC has been an archive of all serious (e.g., indictable and hybrid) offenses;<sup>42</sup> however, despite the scope and convenience of CPIC, a local police services search may still be needed to uncover some minor (summary) convictions.<sup>43</sup>

Be it a local police force, a Crown Attorney, the Royal Canadian Mounted Police (RCMP), Federal Bureau of Investigation (FBI), or International Police (INTERPOL), the warehousing of such information despite, being an important resource about the criminality of Canadian citizens, may be too unrestricted, as within the loose metric of this system there are three types of criminal records.<sup>44</sup> First, a criminal conviction record is a file of one’s history concerning past imprisonment but also suspended sentences, conditional sentences, as well as

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<sup>36</sup> *Ibid.*, at s. 2(1-3).

<sup>37</sup> RSC 1985, c C-47.

<sup>38</sup> RSC 2002, c 1.

<sup>39</sup> 1985, c. P-21 [*The Privacy Act*].

<sup>40</sup> Royal Canadian Mounted Police, Dissemination of Criminal Record Information policy, online: <<http://www.rcmp-grc.gc.ca/en/dissemination-criminal-record-information-policy>>, [Royal Canadian Mounted Police].

<sup>41</sup> *Ibid.*

<sup>42</sup> “How CPIC Works”, *The Star.com*, (July 19, 2008), online: <[https://www.thestar.com/news/crime/crime/2008/07/19/how\\_cpik\\_works.html](https://www.thestar.com/news/crime/crime/2008/07/19/how_cpik_works.html)> [How CPIC Works].

<sup>43</sup> Royal Canadian Mounted Police, *supra* note 40.

<sup>44</sup> *Ibid.*

finances and forfeitures.<sup>45</sup> Second, Canada has a non-conviction finding of guilt record concerning absolute and conditional discharges.<sup>46</sup> Third, there is a non-conviction with no finding of guilt record concerning charges that have been withdrawn, alternative or diversionary measures, acquittal at trial, stay of proceedings, restraining orders, and any casual police contact or actual surveillance, including civic complaints and 911 calls.<sup>47</sup> This record can also include mental health related incidents.<sup>48</sup>

These criminal record products, besides being amassed to facilitate law enforcement objectives,<sup>49</sup> contain information about an individual's past that is applied to the functioning of the judicial system with respect to the sentencing process. Allan Manson explains that criminal records help judges determine "an appropriate response [...] after a finding of criminal responsibility".<sup>50</sup> As such, the sentencing process is both a discretionary and subjective process,<sup>51</sup> albeit, one tempered by a framework of guiding principles that are set out in Section 718 of *The Criminal Code of Canada*, with the predominant principle being that an individual is penalized within a least restrictive framework "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society".<sup>52</sup> With such principles in mind, both Manson and Nigel Walker explain that when criminality is weighed alongside such a legislative rubric, as well as, with a secondary sliding sentencing scale prefaced by concepts like proportionality, parity, restraint, and both mitigating and aggravating factors, a more exacting quantum of punishment should be found for those who

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<sup>45</sup> *What is a Criminal Record*, *supra* note 31, at 1.

<sup>46</sup> *Ibid.*

<sup>47</sup> Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks, (Toronto: Canadian Civil Liberties Association, 2012), at 2 [Presumption of Guilt].

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Manson, *supra* note 11, at 3.

<sup>51</sup> *Ibid.*, at 56.

<sup>52</sup> R.S.C., 1985, c. C-46.

break the law.<sup>53</sup> However, despite the fundamental principle of *The Criminal Code's* sentencing framework being to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society, Walker points out that it also contributes to stigmatization.<sup>54</sup>

### 1.1.2- Criminal Records Check

*The Access to Information Act*<sup>55</sup> and *The Privacy Act* set out the limitations around the disclosure of personal information including criminal records, yet still in 2007, CPIC was “accessed an average 392,792 times each day”.<sup>56</sup> This querying of various databases for instances of past criminality is explained as a necessary risk management process by which society ensures safety, dependability, and trustworthiness in those around them,<sup>57</sup> and is a logic which both the Canadian common law and the Constitution support.<sup>58</sup> Through this authority, in Canada for various purposes including: employment, adoption, international travel, volunteer work, citizenship, name change, education, jury duty, insurance and even house rental, a criminal record check is not just allowable, but required. This gathered information in Canada takes two official guises, the first is a criminal records check that is obtained through a name and date of birth-based query, but if warranted becomes a fingerprint-based verification of prior conviction.<sup>59</sup> The second is a vulnerable sectors check that also begins with a name and date of birth and subsequent fingerprint verification. However, this second type of criminal records check also includes convictions for any pardoned sexually based offences.<sup>60</sup> As well, it should be

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<sup>53</sup> Manson, *supra* note 11, at 83-84; & Nigel Walker *Punishment, Danger and Stigma: The Morality of Criminal Justice* (New Jersey: Barnes & Noble 1980), at 38 [Walker].

<sup>54</sup> Walker, *supra* note 53, at 142-163.

<sup>55</sup> R.S.C., 1985, c. A-1.

<sup>56</sup> How CPIC Works, *supra* note 42.

<sup>57</sup> Canadian Civil Liberties Association, “False Promises, Hidden Costs: The case for reframing employment and volunteer police record check practices in Canada”, (May 2014); & *Chu v. Canada (Attorney General)* 2017, BCSC 630, at para 18.

<sup>58</sup> Presumption of Guilt, *supra* note 47, at 15-21.

<sup>59</sup> Royal Canadian Mounted Police, *supra* note 40.

<sup>60</sup> *Ibid.*

noted that in regards to any type of criminal records check, the process itself cannot occur “without the consent of the individual to whom it relates”,<sup>61</sup> and, as such, “the results of a police information check are generally released to the applicant, who in turn, may then pass the record check along to a prospective employer, volunteer agency or other requesting organization”.<sup>62</sup> Any possible parallels to coercion in this process have been overruled by Canadian courts, as the privacy concerns of individuals with criminal records are understood to be secondary to the safety of society as a whole (see Appendix A). Additionally, of note, at least in Ontario, as of November 1, 2018, the disclosure of non-conviction records will be severely limited.<sup>63</sup> Furthermore, of significance in regards to criminal record checks, in today’s society Christopher Stacey posits that ‘Google has had its effect’ on the populace as an individual’s past interaction with the criminal justice system is now a statistic perhaps never to be forgotten.<sup>64</sup> Any regulatory safeguards seem superfluous, as a persons’ criminalizing artifact is waiting to be found by various internet search engines’ algorithms, like that of Check Criminal Records Now,<sup>65</sup> Instant Checkmate,<sup>66</sup> Truth Finder,<sup>67</sup> and Mr Mugshot<sup>68</sup> not to forget anyone with the time and inclination to look on the internet for themselves.

### 1.1.3- Record Suspensions

A record suspension (formerly called a pardon) is a process that keeps an individual’s record

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<sup>61</sup> *The Privacy Act*, *supra* note, 39, at 7.1 & 8.1.

<sup>62</sup> Canadian Civil Liberties Association, “Police Record Checks and Rights-Respecting Hiring: A guide for businesses and not-for-profit organizations”, (May 2014), online: <[www.ccla.org](http://www.ccla.org)>.

<sup>63</sup> Robert Cribb, “Law protecting Ontarians from disclosure of police records finally gets green light”, in *The Star*, (May 7, 2018) online: <<https://www.thestar.com/news/investigations/2018/05/07/law-protecting-ontarians-from-disclosure-of-police-records-finally-gets-green-light.html>>.

<sup>64</sup> Christopher Stacey, “Rehabilitation in the internet age: The Google effect and the disclosure of criminal records”, in *Probation Journal*, Vol. 64, No. 3 (2017), at 274 [Stacey].

<sup>65</sup> Check Criminal Records Now, online: <<http://www.checkcriminalrecord.com/>>.

<sup>66</sup> Public Records Search Service, online: <<https://www.instantcheckmate.com/>>.

<sup>67</sup> TruthFinder, online: <<https://www.truthfinder.com/>>.

<sup>68</sup> Mr. Mugshot, online: <[www.mrmugshot.com](http://www.mrmugshot.com)>.

of criminal convictions apart from their other criminal records.<sup>69</sup> However, this application to have one's criminal record history separated from the CPIC database is dependent on three things:<sup>70</sup>

1. You have completed your sentence, meaning you completed paying any fines, surcharges, compensation and restitution orders, completed any probation orders or conditional sentence, and served all of your sentence including parole/statutory release;
2. You have met the required wait times: 5 years for a summary offence (or a service offence under the National Defence Act); or 10 years for an indictable offence (or a service offence under the National Defence Act for which you were fined more than \$5,000, detained or imprisoned for more than 6 months).
3. You have been of 'good conduct,' have not been convicted of any new offences, and have no new charges or outstanding fees (including traffic tickets).<sup>71</sup>

If these criteria are met then the Parole Board of Canada is responsible for granting or denying, as well as revoking record suspensions.<sup>72</sup> However, a records suspension does not erase a convicted offence. The granting of a record suspension in effect only sets aside the record of conviction, it does not guarantee entry or visa privileges to another country, and, if a record suspension is related to a sexual offence, the file will be 'flagged' so that it will always be revealed on a vulnerable sector police records check.<sup>73</sup> As well, a record suspension can be revoked, adding one's criminal offenses back into CPIC if one is:

1. Convicted of a new indictable offence, or in some cases, a summary offence;
2. Found to no longer be of good conduct;
3. Found to have made a false or misleading statement, or hidden information when you applied; or
4. Found to have been ineligible for a record suspension at the time the record suspension was ordered.<sup>74</sup>

Additionally of note, as of 2012, you are no longer eligible for a record suspension if you have

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<sup>69</sup> Government of Canada, "What is a Record Suspension, online: <<https://www.canada.ca/en/parole-board/services/record-suspensions/what-is-a-record-suspension.html>> [Government of Canada].

<sup>70</sup> John Howard Society, "What is a Criminal Record Government of Canada, "What is a Record Suspension, online: <<https://www.canada.ca/en/parole-board/services/record-suspensions/what-is-a-record-suspension.html>>.

<sup>71</sup> *Ibid.*

<sup>72</sup> Government of Canada, *supra* note 69.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

been convicted of a Schedule 1 Offence (sexual offence involving a child), or of more than three indictable offences carrying a prison sentence of two years or more.<sup>75</sup> As well, there is a bureaucratic backlog of a year or more wait for indictable offences, and a \$ 631 basic cost involved to attain a records suspension that may put the application out of reach for some.<sup>76</sup> As presented on the Government of Canada’s website, applying for a records suspension is a simple formality of ten steps.<sup>77</sup> However, the complexity, knowledge, and time needed to undertake these ten steps is no easy commitment, as the onus of the process is on the applicant to collect and provide the government information of which they are already the custodians (see Appendix B).<sup>78</sup> Additionally, despite being granted a records suspension one must always inform the Parole Board when changing addresses.<sup>79</sup>

Furthermore, in regards to records suspensions, despite that three Canadian territories recognize criminalization as a protected grounds against discrimination, seven of its provinces do not (see Appendix C).<sup>80</sup> *The Canadian Human Rights Act* does define discrimination among other things as “an action or a decision that treats a person or a group badly for the reasons of [...] a conviction for which a pardon has been granted or a record suspended”.<sup>81</sup> Nevertheless, *The Canadian Charter of Rights and Freedoms* does not recognize a past interaction with the

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<sup>75</sup> *Criminal Records Act*, R.S.C., 1985, c. C-47.

<sup>76</sup> Jim Bronskill & Bruce Cheadle, “New Rules Make for Massive Drop in Pardon”, in *The Globe and Mail*, online: <<https://beta.theglobeandmail.com/news/world/new-rules-make-for-massive-drop-in-pardons/article7217712/?ref=http://www.theglobeandmail.com&>>.

<sup>77</sup> Government of Canada, “The 10 Steps to Apply for a Record Suspension”, online: <<https://www.canada.ca/en/parole-board/services/record-suspensions/10-steps-to-apply-for-a-record-suspension.html>>.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Canadian Center for Diversity and Inclusion, *Overview of Human Rights Codes by Province and Territory in Canada* (January, 2018), online: <<https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>> [Canadian Center for Diversity and Inclusion].

<sup>81</sup> *The Canadian Human Rights Act*, R.S.C., 1985, c. H-6, at s. 2.

criminal justice system as an analogous or enumerated ground for protection.<sup>82</sup> However, the recent Supreme Court of British Columbia case of *Chu v. Canada (Attorney General)*,<sup>83</sup> where criminal records are understood as a form of punishment,<sup>84</sup> strongly suggests that there is juridical hope that legislation around records suspension could be changing for all of Canada.

## 1.2- Agency

Markus Schlosser explains that in “very general terms, an agent is a being with the capacity to act, and ‘agency’ denotes the exercise or manifestation of this capacity”.<sup>85</sup> Nevertheless, he also proposes that besides being traced back to Aristotle,<sup>86</sup> René Descartes,<sup>87</sup> David Hume,<sup>88</sup> and Immanuel Kant<sup>89</sup> that the specifics of these concepts within traditional philosophy are a somewhat contested multidisciplinary field of study.<sup>90</sup> The works of G.E.M. Anscombe,<sup>91</sup> and Donald Davidson<sup>92</sup> in the 1950’s and 60’s respectively, much like the theories about agency before them, centered on the reasoned intentionality of one’s action.<sup>93</sup> However, Thompson suggests, that this narrow understanding found contemporary revitalization in North America through the writing of feminist scholars in the 1980’s who explain that women, regardless of

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<sup>82</sup> *The Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, at section 15 (1)

<sup>83</sup> 2017, BCSC, 630.

<sup>84</sup> *Ibid*, at para 132.

<sup>85</sup> Markus Schlosser, “Agency”, in *The Stanford Encyclopedia of Philosophy*, (2015) online: <<https://plato.stanford.edu/entries/agency/>> [Schlosser].

<sup>86</sup> Aristotle, *Eudemian Ethics*, (Oxford: Oxford University Press, 2011 [384 BCE]); *Nicomachean Ethics* (Cambridge: Cambridge University Press, 2000 [340 BCE]); & *Physics* (London: The Big Nest, 2016 [350 BCE]).

<sup>87</sup> René Descartes, *Discourse on the Method of Rightly Conducting One's Reason and of Seeking Truth in the Sciences*, (London: Yale University Press, 1996 [1637]).

<sup>88</sup> David Hume, *A Treatise of Human Nature*, (London: Penguin Books, 1969 [1739]); & *Philosophical Essays Concerning Human Understanding*, (London: Printed for A Millar, 1748).

<sup>89</sup> Immanuel Kant, *Groundwork for the Metaphysic of Morals*, Mary J. Gregor trans., (Cambridge, Cambridge University Press, 1997 [1785]).

<sup>90</sup> Schlosser, *supra* note 85.

<sup>91</sup> *Intention*, (Oxford: Basil Blackwell, 1957).

<sup>92</sup> “Actions, Reasons, and Causes [1963]”, in Donald Davidson ed., *Essays on Actions and Events: Second Edition*, (Oxford: Clarendon Press, 2002) at 3–19.

<sup>93</sup> Schlosser, *supra* note 85.

external dominant social forces and consequences, are still in control of their narrative, and in charge of their bodies, thus promoting agency as “an intrinsic quality, always in operation, needing only to be recognized”.<sup>94</sup> However, despite the possibility that those who are oppressed are able to explain their circumstances, examining those who can actually do so, reinforces an understanding that only a privileged few are able to exercise their agency, no matter its intrinsic nature. As such, the rationale concerning the inherent nature of agency with the help of Anthony Giddens in the late 80’s,<sup>95</sup> was tempered by its juxtaposition with social structure.<sup>96</sup> For Giddens, social institutions or social relations give shape and coherence to the social world,<sup>97</sup> and this thinking supported by Jürgen Habermas, who in 2007, described that society expects that any reflective exercise of free will should have an agent who within a culturally circumscribed space is responsive to evidence that allows practical judgments be made in regards to social anchoring, sanctions, and behavioural expectations.<sup>98</sup> Habermas, like Giddens, proposes contrary to Kant, that “‘free’ actions are in no way ‘unconditioned’ actions”.<sup>99</sup> Similarly, Gary Watson proposes “a person is only free to the extent that they are able to do or get what they want”.<sup>100</sup> As such, today’s understanding of agency, despite the appearance of intentionality, suggests that a person is not always in control of their own actions. Instead there is a debate between agency and structure that has, as Thompson proposes, now become an inexact but hegemonic preoccupation where the subjective impulses of self-actualization do not just intertwine but are somewhat

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<sup>94</sup> Thompson, *supra* note 12, at 40.

<sup>95</sup> Anthony Giddens, *The Constitution of Society: Outline of the theory of structuration* (Oxford: Polity Press, 1984) at 5-6.

<sup>96</sup> Thompson, *supra* note 12, at 40-42.

<sup>97</sup> *Ibid.*

<sup>98</sup> Jürgen Habermas, “The Language Game of Responsible Agency and the Problem of Free Will: How can epistemic dualism be reconciled with ontological monism?”, in *Philosophical Explorations: An International Journal for the Philosophy of Mind and Action*, Vol. 10, No. 1, (March, 2007), at 16-17.

<sup>99</sup> *Ibid* at 17.

<sup>100</sup> Gary Watson, “Free Agency”, in Laura Ekstrom, *Agency and Responsibility: Essays on the metaphysics of freedom* (New York: Routledge, 2018) at 92.

subordinated to the objective phenomenon that pervades our social worlds.<sup>101</sup> To this debate, Karen Barad would further suggest that “agency is not an attribute of subjects or objects”.<sup>102</sup> To her, as is similarly posited by Bruno Latour, agency is an ubiquitous phenomenon,<sup>103</sup> but unlike actor-network theory which is dependent upon a shifting network of relationships called assemblages,<sup>104</sup> Barad explains agency as a process of continued intra-actions where nothing is inherently separate from anything else, and is instead an enactment of dynamic iterative changes that enables the configuration of the world.<sup>105</sup> Subsequently, within this thinking, notwithstanding the dependency upon the world around us, agency is still reliant upon the choices we make ourselves.<sup>106</sup> As such, there is a tension between that of individuality and that of unseen social forces that act upon us, making us do that which we might not be aware of.<sup>107</sup> This tension as Colin Breck suggests, causes some to become disillusioned being “frustrated, marginalized, and unproductive”<sup>108</sup> when they are unable to “act in a manner that will have any immediate or long-term impact”.<sup>109</sup>

To conclude my brief treatment of agency, notwithstanding Sean Covey positing it as our birthright in that we are all free to choose what we want to make of ourselves,<sup>110</sup> a better framing of this concept is in the understanding that our ability to do what we want is dependent upon much more than our mere wanting, as our decisions are not just shaped by Canadian law but also

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<sup>101</sup> Thompson, *supra* note 12, at 40-44.

<sup>102</sup> Karen Barad, *Meeting the Universe Halfway: Quantum physics and the entanglement of matter and meaning*, (Durham: Duke University Press, 2007), at 178 [Barad].

<sup>103</sup> Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory*, (Oxford: Oxford University Press, 2005), at 5-6 [Latour].

<sup>104</sup> *Ibid*, at 23-24.

<sup>105</sup> Barad, *supra* note 102, at 151-153.

<sup>106</sup> *Ibid*, at 178-179.

<sup>107</sup> David Shoemaker, “Introduction”, in David Shoemaker ed., *Oxford Studies in Agency and Responsibility: Volume 1*, (Oxford: Oxford University Press, 2013) at 1-8.

<sup>108</sup> Colin Breck, “The Importance of Agency”, in Colin Breck.Com, online: <<https://blog.colinbreck.com/>>.

<sup>109</sup> *Ibid*.

<sup>110</sup> Sean Covey, *The 6 Most Important Decisions You Will Ever Make*, (London: Touchstone, 2017), at 7-8.

bent by the social environment in which we operate. As such, the following sections outlined by this literature review will iterate the various ways that an individual's free will and determination are perhaps not just manipulated but thwarted.

### 1.3- Criminalization

John Muncie suggests that today “the idea of criminalization has begun to take a firmer hold in some sections of the popular media, and political imagination”.<sup>111</sup> However, criminalization as a concept has a deep and precise theoretical legacy, as formative traces can be found in the Chicago interactionist school of sociology of the 1930's.<sup>112</sup> Here, Frank Tannenbaum argued that delinquency, other than being a self-evident behavioural artifact, is created through a process of social interaction.<sup>113</sup> To him, besides contravening the law, a criminal was someone who is made through a “process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious”.<sup>114</sup> To Tannenbaum, as Muncie explains, “the known deviant is then targeted, identified, defined, and treated as such, even though their behaviour may be no different to those who have not been so identified”.<sup>115</sup> Consequently, those who are labelled, like those legislatively mandated with criminal records, “‘become deviant’ through the imposition of social judgments on their behavior: they *become* the essence of what is being complained of”.<sup>116</sup> Edwin Lemert further refined Tannenbaum's thinking concerning the status of a criminalized individual in society, as being a product of their

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<sup>111</sup> John Muncie, “The theory and politics of criminalization”, in *Criminal Justice Matters CJM*, Vol., 74, No. 1 (2008), at 13.

<sup>112</sup> John Muncie, “Labelling, Social Reaction and Social Constructionism”, in Eugene McLaughlin, & Tim Newburn eds., *The SAGE Handbook of Criminological Theory*, (London: SAGE Publications. 2010), at 141 [Muncie, *The SAGE Handbook of Criminological Theory*].

<sup>113</sup> Frank Tannenbaum, *Crime and Community*. (New York: Columbia University Press, 1938), at 17-19.

<sup>114</sup> *Ibid* at 19-20.

<sup>115</sup> Muncie, *The SAGE Handbook of Criminological Theory*, *supra* note 112, at 141.

<sup>116</sup> *Ibid*.

primary and secondary deviance.<sup>117</sup> To him, primary deviance is the temporary transgression of a legal norm for whatever reason in which perpetrators have no real conception of themselves as deviant.<sup>118</sup> Subsequently, secondary deviance, in regards to criminalization, but moreover in the regards to a further understanding of self-stigma is “a means of social defense, attack, or adaption to the overt and covert problems created by the social reaction”<sup>119</sup> of others with an individual’s initial (primary) deviance.<sup>120</sup> As such, Muncie explains that both Tannenbaum’s social interaction, as well as Lemert’s social reaction to practices of name calling, stereotyping and labelling facilitate a deviant identity that becomes both established and confirmed by one so socially categorized.<sup>121</sup> This thinking is reflected in advice given by a Warden of Sing Sing prison to Lewis Lawes who suggests “the reason men come back to prison a second, third or fourth time [...] is because the prisoner, on his discharge from prison, is conscious of invisible stripes fastened upon him”.<sup>122</sup> However, despite the applicability of Tannenbaum and Lemert’s theories I suggest that few things in life are a certainty.

Building on Tannenbaum and Lemert, Muncie suggests that the concept of criminalization eventually found its feet in the 1960’s as espoused by the American sociologist Howard Becker.<sup>123</sup> Becker explained deviance “*not* as a quality of the illegal act the person commits, but rather as a consequence of the application by others of rules and sanctions, to whom the label has successfully been applied; [as] deviant behavior is behavior that people so

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<sup>117</sup> Edwin Lemert, *Social Pathology a Systematic Approach to the Theory of Sociopathic Behavior* (New York: McGraw-Hill Book Company Inc., 1951), at 75.

<sup>118</sup> Edwin Lemert, *Human Deviance, Social Problems and Social Control* (New Jersey: Prentice-Hall, 1967), at 17 & 40.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Muncie, *The SAGE Handbook of Criminological Theory*, *supra* note 112, at 141.

<sup>122</sup> Lewis E. Lawes, *Invisible Stripes*, (New York: Farrar and Rinehart, Inc., 1938), at 298.

<sup>123</sup> *Ibid.*

label”.<sup>124</sup> Therefore, to him a criminal is only a criminal when they have been caught. Borrowing from Erving Goffman’s thinking of labelling theory, once an act has been labelled as deviant the deviant actor may now see themselves as deviant and subsequently may adopt this label or role.<sup>125</sup> Within such understanding, Muncie explains those categorized as deviant may personify this label by accepting their deviant status and thus reorganizing their lives accordingly, and in effect become more rather than less deviant as they adopt this label as their master status.<sup>126</sup> Robert Merton discusses this as a self-fulfilling prophecy where a “*false* definition of the situation evoke[s] a new behaviour which makes the originally false conception come *true*”.<sup>127</sup> Becker concurs, explaining that those who are defined as deviant are subsumed into a subculture as a result of having been socially banished.<sup>128</sup> Within this forced social space, the criminalized live according to a set of perspectives and understandings about what the world is like and how to deal with it based on a set of routine activities (e.g., labels/stereotypes) created through social presumptions, assumptions, and assertions that exert such an authority, as to solidify a deviant identity where one might not have been before.<sup>129</sup> However, such predetermination removes the consideration of agency and choice as not everyone who is found guilty of a criminal offence performed the act because ‘society made them’. Nevertheless, according to Becker, social labelling facilitates a self-fulfilling prophecy that is exacerbated by the constant stigmatizing social narrative forced upon the so-called deviant, who in-turn responds by performing the

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<sup>124</sup> Howard S. Becker, *OUTSIDERS: Studies in the Sociology of Deviance* (New York: The Free Press, 1963), at 9 [Becker].

<sup>125</sup> Erving Goffman, *The Presentation of Self in Everyday Life*, (University of Edinborough: 1956), at 15 [Goffman: 1956].

<sup>126</sup> Muncie, *The SAGE Handbook of Criminological Theory*, *supra* note 112, at 141.

<sup>127</sup> Robert K. Merton, *Social Theory and Social Structure: enlarged edition* (New York: The Free Press, 1968), at 477.

<sup>128</sup> Becker, *supra* note 89 at 38.

<sup>129</sup> *Ibid.*

criminalized role that society has provided them.<sup>130</sup>

Similarly, in regards to criminalization but carrying with it the same lack of agency, Tim Newburn explains Leslie Wilkins's concept of deviancy amplification that may allow the transmission of information about deviance to be both distorted and exaggerated, which in turn may lead to an adaptive behavioural reaction.<sup>131</sup> As explained by Wilkins, the more acts in society that are defined as criminal only perpetuate more action against criminals (e.g., tough on crime rhetoric), which in turn leads to the increased alienation of deviants that in turn results in more crime thus causing the socially conforming group to be less tolerant of deviants.<sup>132</sup> Within this spiraling, connected social vortex, Stanley Cohen explains that 'folk devils' and 'moral panics' can be created.<sup>133</sup> These occur as a result of how the criminalized group which suffers punitive sanctions or actions due their social labelling will be further marginalized, for "it is more likely that [when] the deviant group is vulnerable and its actions highly visible, it will be forced to take on its identities from structurally and ideologically more powerful groups".<sup>134</sup> As such, I suggest that mandated criminal records exacerbate both visibility and vulnerability, and recommend like Edwin Schur a radical non-interventionist approach where state interference is curtailed to prevent further marginalization.<sup>135</sup> While Schur's approach is somewhat dated, Lamar Empey, Marc Stafford, and Carter Hay understand its merits and suggest that measured tolerance might be a better policy than outright social rejection.<sup>136</sup>

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<sup>130</sup> *Ibid*, at 39.

<sup>131</sup> Tim Newburn, *Criminology: second edition*, (New York: Routledge, 2013), at 224 [Newburn].

<sup>132</sup> Leslie Wilkins, *Social Deviance: Social Policy, Action and Research* (New York: Routledge, 1964), at 90.

<sup>133</sup> Stanley Cohen, *Folk Devils & Moral Panics The Creation of the Mods and Rockers* (London: MacGibbon and Kee Ltd., 1972), at 12.

<sup>134</sup> *Ibid*.

<sup>135</sup> Edwin M. Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* (London: Prentice-Hall, 1973), at 3.

<sup>136</sup> LaMar T. Empey, Mark C. Stafford, & Carter H. Hay, *American Delinquency: Its Meaning and Construction 4th Edition* (Belmont, CA.: Wadsworth Publishing, 1999), at 5-12.

Notwithstanding other theories of criminality,<sup>137</sup> Muncie explains “the key to understanding the origins of deviance lay in the reactions of a social audience, rather than in the behaviour of individual actors themselves, [as] deviance [is] no longer viewed simply as a pathological act that violated consensual norms, but as something created through micro-level interactions between rule violator and rule enforcer”.<sup>138</sup> Criminalization then, is based on the subjectivity of moral entrepreneurs, who, being agents of social control, get to decide what behaviors are to be labelled as deviant or not.<sup>139</sup> To Muncie, “this refocusing of criminology dramatically shifted attention from the behaviours of those commonly thought to constitute a problem for society to those who conceive those behaviours as problems”.<sup>140</sup> As such, to him this ‘power to criminalize’ through the systematic and consistent empowerment of some groups and the criminalization of others, was both a crucial but furthermore, a critical turning point in the politicization of the study of deviance, crime and social control.<sup>141</sup> Therefore, despite recent academic thinking suggesting that labelling theory has been subsumed within the broader concept of social constructivism,<sup>142</sup> it may be argued that how Dragan Milovanovic explains this newer label of criminalization as a subjective process made possible through the theoretical underpinnings of semiotics, is still reminiscent of the earlier labelling tradition.<sup>143</sup> This parallel is particularly poignant, as semiotics is a theory postulating that the study of signs and symbols and their use or interpretation are determining factors in how and what society feels and thinks.<sup>144</sup> However, regardless of the similarities, there is now an overarching claim that criminalization is,

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<sup>137</sup> Re: Rational Choice Theory, Feminist Theory, Biology, Genetics & Evolution; etc.

<sup>138</sup> Muncie, *The SAGE Handbook of Criminological Theory*, *supra* note 112, at 141.

<sup>139</sup> Newburn, *supra* note 131, at 220.

<sup>140</sup> Muncie, *The SAGE Handbook of Criminological Theory*, *supra* note 112, at 142.

<sup>141</sup> *Ibid*, at 141.

<sup>142</sup> Newburn, *supra* note 131, at 9.

<sup>143</sup> Dragan Milovanovic, *Critical Criminology at the Edge: Postmodern Perspectives, Integration, and Applications* (London: Praeger, 2002), at 25.

<sup>144</sup> Newburn, *supra* note 131, at 9.

as Deborah Brock explains, “an active social process, focusing in particular on how crime and those who commit crimes are constituted [and] by constituted we mean the ‘making up’ (or social production) of people, beliefs and practices through everyday activities, discourses, and ideologies”.<sup>145</sup> As such, criminalization is a subjective process that Brock, among others<sup>146</sup> understand as a contested social product reflecting a myriad of power imbalances.<sup>147</sup> Therefore, when discussing criminalization, the influence of Marxist thinking in regards to its economic and political aspects should not be dismissed.<sup>148</sup> Michel Foucault acknowledges this Marxian brand of essentialism yet postulates his own reductionist discursive philosophy in regards to a further evolution of criminalization.<sup>149</sup>

Foucault in *Discipline and Punish: The Birth of a Prison*, discusses how the individual in modern times is subjected to a subtler more invasive control than that of the sovereign power of the king.<sup>150</sup> The power that Foucault is most concerned with is not the centralized capital ‘P’ power of the state, but rather a smaller “micro-physics of power”<sup>151</sup> that legitimizes the way society understands itself.<sup>152</sup> To him, power, “reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives”.<sup>153</sup> This process, however, is inherently linked to knowledge but

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<sup>145</sup> Deborah Brock, “Thinking Differently about Crime”, in Deborah Brock, Amanda Glasbeek & Carmela Murdoca eds., *Criminalization, Repression, Regulation: Thinking Differently about Crime*, (Toronto, Toronto University Press, 2014), at xiii [Brock].

<sup>146</sup> George Herbert Mead, *Movements of Thought in the Nineteenth Century*, (University of Chicago: 1936) at 223; Goffman 1956, *supra* note 121, at 15; & Ian Hacking, *The Social Construction of What?*, (Cambridge: Harvard University Press, 1999), at 1-3.

<sup>147</sup> Brock, *supra* note 145, at xiii; & Newburn, *supra* note 131, at 9.

<sup>148</sup> Newburn, *supra* note 131, at 264-265.

<sup>149</sup> Michel Foucault, *Discipline & Punish: The Birth of the Prison*, A. M. Sheridan Smith trans., (New York: Random House, 1995), at 71 [Foucault 1995].

<sup>150</sup> *Ibid*, at 100.

<sup>151</sup> *Ibid*, at 69.

<sup>152</sup> Michel Foucault, “Critical Theory/Intellectual Theory”, in Lawrence Kritzman ed., *Michel Foucault: Politics, Philosophy, Culture: Interviews and Other Writings, 1977–1984*, (London: Routledge, 1988), at 38 [Foucault 1988].

<sup>153</sup> Michel Foucault, in Colin Gordon ed., *Power/Knowledge Selected Interviews and Other Writings 1972-1977*, (New York: Pantheon Books 1980), at 39 [Foucault 1980].

also truth, for to him; “there is no power relation without the correlative constitution of a field of knowledge, nor any [truth] that does not presuppose and constitute at the same time, power relations”.<sup>154</sup> As Alan Hunt and Gary Wickham suggest, this does not insinuate that “knowledge is bad, polluted or corrupted by virtue of its production within relations of power and within institutions, it simply indicates that upon an individual in society knowledge is a major resource of power”.<sup>155</sup> However, as Stacey Hannem clarifies, when knowledge and truth are integrated into the larger social structure of understanding at the insistence of power, the name-calling, and stereotyping discussed within labeling theory can become reified.<sup>156</sup> Hunt and Wickham explain, like Milovanovic, that “the social world is experienced through language and through the ways in which people label and value the context [...] in which they live”.<sup>157</sup> As a result, “language plays a major part in constituting social subjects, the subjectivities and identities of persons, their relations and the field in which they exist”.<sup>158</sup> According to this line of thinking, to be a criminal, or for that matter a chicken, is not an arbitrary label, but one that is wrapped in all the complexities that necessitates ‘criminalness’, or ‘chickenness’, in a particular culture at a particular point in time.<sup>159</sup> Discourse refers to elements that make up, if not a coherent totality, then at least a wider frame of reference, for discourse puts in place a set of linked signs that organize human thinking and behaviour.<sup>160</sup> As such, the symbolic language of discourse is more than an external signifier of reference, and instead is moreover, the prime motivator through which specific forms of knowledge are included or excluded. As proposed by Hunt and

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<sup>154</sup> *Ibid*, at 27.

<sup>155</sup> Alan Hunt & Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (Chicago: Pluto Press, 1998), at 11 [Hunt & Wickham].

<sup>156</sup> Stacey Hannem, *Stigma Revisited: implications of the mark*, in Stacey Hannem & Chris Bruckert, eds., (Ottawa: University of Ottawa Press, 2012), at 21.

<sup>157</sup> Hunt & Wickham, *supra* note 155, at 7.

<sup>158</sup> *Ibid*.

<sup>159</sup> *Ibid*.

<sup>160</sup> *Ibid*, at 8.

Wickham, discourse can marginalize, as well as separate, and as such, dominate as well as subordinate.<sup>161</sup> Similarly, Dawn Moore posits that the classification of an entire group as deviant for breaking social norms, and making them criminals, enables their control at the hands of society's institutions (i.e., criminal justice system).<sup>162</sup>

In summation, it is simplistic to think that just because someone is labelled something that they will become it, for growing up my sister called me a litany of things that I have yet to become having never accepted her classification of me nor reorganized my life accordingly. As argued by Newburn, there is no positivistic certainty to be found in labelling theory; however, in certain circumstances labels seem to have a direct effect on, if not future criminality, then at least life chances.<sup>163</sup> More emphatically, Ken Plummer reiterates, like Newburn and Muncie, that labelling theory, despite being tied to dynamics of power, is not dead but instead can be found shaping the lives of those who are so pigeonholed, particular when discussing the idea of shame and stigmatization.<sup>164</sup> Therefore, it seems fair to admit that words have power, where even the labels they produce, like that of deviant or criminal, do not just categorize but castigate and create as well. When applied to individuals in society these 'tags' may influence behavior, as those labelled sometimes have little choice but to conform to the essential meaning of that judgment. The negative consequences of such labels seem more socially destructive than constructive, particularly when attached to a legislatively mandated criminal record. If one of the purposes of the criminal justice system is to reduce recidivism, applying a long-term label like that of a criminal record may cause undue prejudice against those designated as abnormal,

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<sup>161</sup> *Ibid.*, at 13.

<sup>162</sup> Dawn Moore, *Criminal Artefacts, Drugs, Users and Canadian Criminal Justice*, (Vancouver: UBC Press, 2007), at 4.

<sup>163</sup> Newburn, *supra* note 131, at 228.

<sup>164</sup> Ken Plummer, "Labelling Theory Revisited: Forty years on" in Helge Peters & Michael Dellwing eds., *Langweiliges Verbrechen/Boring Crimes*, (Weisbaden: VS Verlag, 2011), at 90.

resulting in more harm than good. As well, if the functionalist approach to applying a criminal label is to address moral harm and a rationalist approach is to address actual harm, labeling someone a criminal forever from what has been explained does not seem like a function of rationalism.

Criminalization then is not just a social product, but rather a social disease, where the pathogens or labels we attach to individuals in society help create the epidemic that we are trying to cure. Additionally, using the theoretical ideas proposed by labelling theory, the current concept of a record suspensions hints at something forever waiting to be used again. The earlier vernacular of a pardon, as explained by its dictionary meaning, albeit, not a legal one, concerns “the action of forgiving or being forgiven for an error or offense,”<sup>165</sup> as substantiated by the synonyms attached to the word, like that of absolution, clemency, mercy, and lenience.<sup>166</sup> However, the replacement of the word ‘pardon’ with that of ‘records suspension’ carries very different connotations. Suspension, as explained by both the dictionary as a “condition of being suspended”,<sup>167</sup> and its synonyms, of postponement, delay, deferral, deferment, shelving, intermission, interlude, prorogation, and tabling,<sup>168</sup> not to mention, its use within Canadian legal thinking, explains something less permanent, perhaps hinting at a policy of mistrust.

#### **1.4- Surveillance**

Despite any nefarious undertones, surveillance as explained by David Lyon, concerns routine and everyday activities.<sup>169</sup> Being etymologically derived from the “French verb *surveiller*, literally to watch over, surveillance refers to a process in which special note is taken

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<sup>165</sup> Pardon, in *English Oxford Dictionary*, online: <<https://en.oxforddictionaries.com/definition/pardon>>.

<sup>166</sup> *Ibid.*

<sup>167</sup> Suspend, in *English Oxford Dictionary*, online: <<https://en.oxforddictionaries.com/definition/suspension>>.

<sup>168</sup> *Ibid.*

<sup>169</sup> David Lyon, *Surveillance Studies: An Overview* (Cambridge: Polity Press, 2007), at 13 [Lyon].

of certain human activities that go well beyond idle curiosity”.<sup>170</sup> At the same time, it is both ambiguous in its everyday prevalence and unmistakable in result, as it is through the focused, systematic, and routine attention to personal details that specific information garnered by surveillance is used to influence, manage, direct, and/or protect.<sup>171</sup> As David Harvey explains, the modern neoliberal nation-state values both dignity and freedom, but it cares little about how it is achieved, as the prosperity of such societies are to be ensured by sacrificing both these seemingly fundamental principles of human rights when necessary to ensure free-market capitalism.<sup>172</sup> The security of Western nation states according to Harvey is now dependent on threat adverse policy-making based on the rise of surveillance and policing.<sup>173</sup> He explains that such governmental initiatives of intense social control have led the prison-industrial complex within America to become a thriving economic sector.<sup>174</sup> Canada likewise, has emulated its neighbor to the South with its use of super jails, despite other choices to address the potential threat posed by crime within its borders.<sup>175</sup> Due to such political thinking, Lyon posits that criminal records have become “a normal part of everyday life in societies that depend on bureaucratic administrations and [...] information technologies”.<sup>176</sup> This normalizing process was made possible by the onset of what Daniel Bell explains as the information society, where technologies of information not only create but also have the capacity “to accumulate, store,

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<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid* at 14-15.

<sup>172</sup> David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005) at 5.

<sup>173</sup> *Ibid* at 83.

<sup>174</sup> *Ibid* at 165.

<sup>175</sup> Meagan O’Toole, “Toronto’s new \$594-million ultra-modern jail features ‘fresh air’ rooms, flat-screen TVs”, in *The National Post* (October 3, 2013) online: <<http://nationalpost.com/posted-toronto/toronto-south-detention-centre>> ; &, Andrew Seymour, “Ottawa to get new 725-bed jail. But what will it cost? And where will it go?”, in *The Ottawa Citizen* (May 5 2017), online: < <http://ottawacitizen.com/news/local-news/ottawa-to-get-new-725-bed-jail-province-announces>>.

<sup>176</sup> Lyon, *supra* note 169, at 14.

transfer, analyse, and use massive databases to guide decisions”.<sup>177</sup> However, before discussing the applicability of criminal records in regards to surveillance, some background on how the term found purchase within academia will provide more insight into how, as Maša Galič *et al.* explain, the concept in Western societies “has triggered the emergence of a [...] multidisciplinary field covering both theoretical and empirical accounts of past, current and near-future surveillance”.<sup>178</sup>

### 1.3.1- Surveillance and the Panopticon

In regards to past conceptions, Phillip Schofield explains, the eighteenth century English penal reformer and utilitarian philosopher Jeremy Bentham first touched upon the idea of surveillance, albeit, borrowed from his brother Samuel, who devised a means to oversee his workers within an architectural structure known as the panopticon (pan = all & optic = seeing).<sup>179</sup> After understanding his brother’s initial design and appreciating its potential, Schofield outlines, Bentham set about enshrining the principles of scrutiny and security, within his own vision of an engineered solution to the social ills of his time that he believed were needing remedy, as “the panopticon might be adapted as a mental asylum, hospital, school, poor house, factory and, of course, prison”.<sup>180</sup> However, regardless of the social reason to be assisted, there is a general basis of its workings that can be found within Bentham’s explanation of the prison panopticon, where morals would be “reformed - health preserved - industry invigorated - instruction diffused - public burthens lightened [...] - all by a simple idea in architecture”.<sup>181</sup> According to him, the building would be circular, with the cells placed

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<sup>177</sup> Daniel Bell, *The Coming of the Post-Industrial Society* (New York: Basic Books, 1973), at 3.

<sup>178</sup> Maša Galič *et al.*, “Bentham, Deleuze and Beyond: An Overview of Surveillance Theories from the Panopticon to Participation”, in *Philosophy & Technology*, Vol. 30, No. 1, (March 2017), at 10 [Maša Galič *et al.*].

<sup>179</sup> Phillip Schofield, *Bentham: a Guide for the Perplexed* (London: Continuum Books. 2009), at 72 [Schofield].

<sup>180</sup> *Ibid*, at 72.

<sup>181</sup> Jeremy Bentham, *Panopticon or the Inspection House 1791* (Whitefish, MT: Kessinger Publishing, 2009), at 2.

around the circumference one above another, and at the center would be the inspector's lodge, which would be so constructed that the inspector would always be capable of seeing into the cells, while the prisoners would be unable to see whether they were being watched.<sup>182</sup> As such, the activities of the prisoners would be transparent to the inspector; however, the inspector's actions, insofar as the prisoners were concerned, were hidden behind a veil of secrecy.<sup>183</sup>

Additionally, a fundamental feature of the panoptic design was that the activities of the inspector, and any officials should be transparent to the general scrutiny of the public, for all are encouraged to visit the prison, to further aid its panoptic influence.<sup>184</sup> However, no matter the time and money spent trying to realize this vision, Bentham's panopticon was never built, although, perhaps it did come to fruition with the aid of Michel Foucault.<sup>185</sup>

Galič *et al*, understood the panopticon as “a paradigmatic idea that can be adapted and used in a variety of social spaces and for different purposes”.<sup>186</sup> Foucault thought as much also, as he and those who followed him, borrowed and expanded this idea “into a broader perspective on power relations and networks in modern societies”.<sup>187</sup> Foucault, in *Discipline and Punish*, discusses how “society is one not of spectacle, but of surveillance”.<sup>188</sup> To him, punishment should no longer be found in public displays of torture, but rather, in a more modern understanding of control where discipline becomes internalized,<sup>189</sup> consequently, socializing those corrected by the panopticism found within a “vigilance of intersecting gazes”.<sup>190</sup> As explained by Foucault, with humanity as its focus, the human sciences accrue a

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<sup>182</sup> *Ibid*, at 5.

<sup>183</sup> *Ibid*.

<sup>184</sup> *Ibid*, at 13.

<sup>185</sup> Schofield, *supra* note 179, at 70.

<sup>186</sup> Maša Galič *et al.*, *supra* note 178, at 11.

<sup>187</sup> *Ibid*, at 15.

<sup>188</sup> Foucault 1988, *supra* note 152, at 97.

<sup>189</sup> Foucault 1995, *supra* note 149, at 47.

<sup>190</sup> *Ibid*, at 97.

body of knowledge, creating a regime of power that both describes and controls human behavior in terms of norms within a disciplinary technology.<sup>191</sup> As a result, individuals found guilty of breaking the law are defined by experts, be it psychiatry, criminology, sociology, psychology, medicine, or criminal justice actors, but moreover, from within what Foucault calls a ‘carceral archipelago’, that being society itself.<sup>192</sup> To him, those

who [are] subjected to a field of visibility, and who know it, assume responsibility for the constraints of power; [and] makes them play spontaneously upon [them]self; inscrib[ing] in [them]self the power relation in which [they] simultaneously play both roles; [by] becom[ing] the principle of [their] own subjection.<sup>193</sup>

As such, those who live in society take on the role of seer and seen, keeping themselves and each other in check through a process aided by the carceral nature of the modern world in which we live.<sup>194</sup> Disciplinary technologies and their surveillance systems, like little islands within a bigger ocean, act on and are accessed by everyone in society, creating levels of social control and acceptance that radiate between the structures of society and the people that inhabit them.<sup>195</sup> Foucault explains, within this capillary network of power,<sup>196</sup> individuals act as their own “authorities of surveillance and registration, its experts in normality, [and ...] continue to multiply the functions of the judge, [as ...] the modern instrument of penalty”.<sup>197</sup> To him, it is not “surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons”.<sup>198</sup>

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<sup>191</sup> *Ibid*, at 84, 85, 100, 120, 127.

<sup>192</sup> *Ibid*, at 127-129.

<sup>193</sup> *Ibid*, at 91.

<sup>194</sup> *Ibid*, at 127.

<sup>195</sup> *Ibid*, at 127-129

<sup>196</sup> Foucault 1980, *supra* note 143, at 39

<sup>197</sup> Foucault 1995, *supra* note 149, at 100.

<sup>198</sup> *Ibid*, at 100.

### 1.3.2- Surveillance and Bio-power

Concerning the need for criminal records, Foucault expands on his disciplinary understanding of power, where the fabrication of a ‘docile body’, being one that conforms to social norms, is a result of “hierarchical observation, normalizing judgement, and their combination in a procedure that is specific to it, the examination”.<sup>199</sup> From this newer perspective he is perhaps answering his own question from within *Discipline and Punish*, where he asks after architectural and administrative panopticism, wondering “which form guarantees the best surveillance?”<sup>200</sup> His answer seems one relevant to his earlier writings, for his next version of surveillance still seems to be “born out of methods of punishment, supervision and constraint”.<sup>201</sup> However, this control that is hinted at in *Discipline and Punish* as a more “subtle, calculated technology of subjection”,<sup>202</sup> is in his subsequent writings subsumed under the more overt categorizing idea of bio-power, an idea explained by Foucault in *The History of Sexuality Vol I*, as consisting “of numerous and diverse techniques for achieving the subjugations of bodies and the control of populations”.<sup>203</sup> To him, this subjugation and control seems to center on issues of economics, health, and security.<sup>204</sup> Bio-power can be seen to include the present use of criminal records within the idea of governmentality, or the way in which the state exercises control over, or governs, the body of its populace.<sup>205</sup>

This concept is further touched on by Bal Sokhi-Bulley, who describes that this ability to control is predicated on the practice of power over freedom as a major tool in the state’s ability

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<sup>199</sup> *Ibid*, at 78.

<sup>200</sup> *Ibid*, at 105.

<sup>201</sup> *Ibid*, at 18.

<sup>202</sup> *Ibid*, at 98.

<sup>203</sup> Michel Foucault, *The History of Sexuality Volume I: An Introduction* (New York: Pantheon Books, 1978), at 140.

<sup>204</sup> *Ibid*, at 141.

<sup>205</sup> Michele Foucault, *The Foucault Effect* (Chicago: The University of Chicago Press, 1991), at 87.

to govern.<sup>206</sup> In regards to surveillance (and criminalization), Michael Mopas suggests the “advent of crime statistics provides a clear illustration of how the collection of data about a particular population has influenced the way in which they are governed”.<sup>207</sup> Such a process has “the capacity to create identities for the people that”,<sup>208</sup> as Simon Cole posits, now “exist outside the physical body, in the files and paper records of some government bureaucracy”.<sup>209</sup> This is a controlling influence that, as Michael Hardt and Antonio Negri explain, extends throughout the depths of the shared consciousness’s and not just the bodies of the population,<sup>210</sup> much like the present erroneous belief that the dissemination of criminal records will keep society safe. However, despite Foucault’s influence on surveillance (and criminalization), Newburn suggests there are limitations to his legacy, which David Garland addresses in his book *The Culture of Control* and are presented in the following section.<sup>211</sup>

### 1.3.3- Surveillance and the Culture of Control

To Garland, criminology is more a present concept than an artifact of the past, and he views Foucault as dealing in abstractions rather than real world practicality.<sup>212</sup> Speaking to this needed pragmatism, but still essentially presenting insightful generalizations of his own, Garland discusses how modern penal policy making has some correlation to surveillance, criminal records, and stigma, albeit, based on American and British data.<sup>213</sup> He explains that since the

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<sup>206</sup> Bal Sokhi-Bulley, “Governmentality: Notes on the Thought of Michel Foucault”, in *Critical Legal Thinking-Law and the Political*, online: <<http://criticallegalthinking.com/2014/12/02/governmentality-notes-thought-michel-foucault/>>.

<sup>207</sup> Michael Mopas, “Thinking Differently about Crime”, in *Criminalization*, (Toronto: Toronto University Press, 2014), at xiii.

<sup>208</sup> *Ibid.*

<sup>209</sup> Simon Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Cambridge: Harvard University Press, 2001), at 10.

<sup>210</sup> Michael Hardt and Antonio Negri, *Empire* (Boston: Harvard University Press, 2000), at 24.

<sup>211</sup> Newburn, *supra* note 131, at 344-345.

<sup>212</sup> Garland, *supra* note 5, at 2-3.

<sup>213</sup> *Ibid.*, at 6-7.

1970's there has been a decline of the rehabilitative ideal.<sup>214</sup> To him, there is a recognized “fading of correctionalist and welfarist rationales for criminal justice interventions; a reduced emphasis upon rehabilitation as the goal of penal institutions; and changes in sentencing law that uncouple participation in treatment programmes”.<sup>215</sup> Any rehabilitative function of law has been “subordinated to other penal goals, particularly retribution, incapacitation, and the management of risk”,<sup>216</sup> situating the past “core value of the whole penal-welfare framework not just as an impossible ideal, but, much more remarkably, as an unworthy, even dangerous policy objective that was counter-productive in its effects and misguided in its objectives”.<sup>217</sup> In contrast, Newburn, quoting Winston Churchill, draws attention to the flawed nature of such thinking, as Churchill was inclined to believe that there was a treasure, if you could only find it in the heart of every person.<sup>218</sup> Instead, this ‘culture of control’ has allowed the re-emergence of punitive sanctions and expressive justice within modern political discourse, as a backlash to penalties that politicians explain are not harsh or retributive enough.<sup>219</sup> Therefore, through such legislation government officials push ‘just desserts’ sanctions within a framework of public shaming and humiliation despite that such thinking is understood as obsolete and excessively demeaning.<sup>220</sup> In Canada, Bill C-10 is an example of such an endeavor, as it, among other things, allowed the amending of the *Criminal Records Act* to remove the pardon and replace it with the new rules concerning record suspensions.<sup>221</sup> Labelling someone a criminal through mandated criminal records seems like such a retroactive punitive policy, especially when criminal records for the

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<sup>214</sup> *Ibid*, at 8.

<sup>215</sup> *Ibid*.

<sup>216</sup> *Ibid*.

<sup>217</sup> *Ibid*.

<sup>218</sup> Newburn, *supra* note 131, at 339.

<sup>219</sup> Garland, *supra* note 5, at 8-9.

<sup>220</sup> *Ibid*.

<sup>221</sup> *Safe Streets and Communities Act*, S.C. 2012, c. 1 at 109 (1).

most mundane of behaviours bear the effects of stigma, as well as the shame and humiliation that accompany them.

The criminal justice system, as Garland suggests, should create rationales for retributive measures that better express the cultural assumptions and political interests that empiricism has proven effective within the practice of punishment.<sup>222</sup> Instead, there is a politicization of a new populism where governments avoid expert opinion and evidence based policy initiatives.<sup>223</sup> One might think that ‘politicization’ would suggest a variety in options, however, Garland suggests that

the populist form that penal politics has taken has had an opposite effect [as...] there is no real differentiation of policy positions, for the 1980s and 1990s, created a narrowing of debate and a striking convergence of the policy proposals of all the major political parties.<sup>224</sup>

This process was facilitated within the governmental policy of the last Conservative government, by how Garland posits, that the “importance of research and criminological knowledge is downgraded and in its place is a new deference to the voice of ‘experience’, of ‘common sense’, [and] of ‘what everyone knows’”.<sup>225</sup> However, policy with no mooring in empirical peer reviewed actuality is policy that is in need of if not replacing then at least further analysis. As such, in Canada, Garland’s thinking, at least in relation to criminal records, is somewhat lapsed as the present Liberal government has very recently held public forums on the value of changing legislation regarding criminal records.<sup>226</sup> Nonetheless, criminal policy making is a contested arena of vote grabbing through fear mongering, and as Carol Sanger suggests, legislating to

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<sup>222</sup> *Ibid*, at 9.

<sup>223</sup> *Ibid*, at 13.

<sup>224</sup> *Ibid*.

<sup>225</sup> *Ibid*.

<sup>226</sup> Alison Crawford, “Government Hears Support for Making it Easier, Cheaper to Obtain a Criminal Pardon”, in *CBC News*, (October 10, 2017), online: < <http://www.cbc.ca/news/politics/pardons-record-suspensions-parole-board-canada-1.4341976> > [Crawford].

produce affect.<sup>227</sup> As Garland explains, a “highly charged political discourse now surrounds all crime control issues, so that every decision is taken in the glare of publicity and political contention and every mistake becomes a scandal”.<sup>228</sup> To him, “legislators are becoming more ‘hands on’, more directive, more concerned to subject penal decision-making to the discipline of party politics and short-term political calculation”.<sup>229</sup> He posits that “a rigid new consensus has formed around penal measures that are perceived as tough, smart and popular with the public”,<sup>230</sup> and as such, the monitoring of all past criminals will be something that is purported as a necessary measure (i.e., once a criminal always a criminal) and that criminal records keep society safer, despite being both a retroactive and ineffective measure to prevent crime. However, the new government’s rhetoric in regards to criminal records is very intriguing and relevant.

Garland also discusses the change in the emotional tone of crime policy, as politicization has allowed an overwhelming insecurity to be perpetuated by ‘the fear of crime’.<sup>231</sup> In the past, he explains, the regulation of crime was marketed in an idyllic way, as a rational procedure of justice found in a theoretically humane practice based on the needs of the many, while today he posits that criminal law policy is simply an emotive response to society’s manufactured anxiety about crime.<sup>232</sup> To him, the “fear of crime has come to be regarded as a problem in and of itself, quite distinct from actual crime and victimization, and distinctive policies have been developed that aim to reduce fear levels, rather than to reduce crime”.<sup>233</sup>

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<sup>227</sup> Carol Sanger, “Legislating with affect: Emotion and legislative law making”, in James M. Fleming, ed., *Passions and Emotions* (New York: New York University Press 2013), at 38 [Sanger].

<sup>228</sup> Garland, *supra* note 5, at 13.

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.*, at 10.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

This theme of aversion, fear, anger, resentment, and generalized insecurity has become culturally ingrained around the risk of victimization.<sup>234</sup> However, the victim is a symbolic figure, standing in for widespread concerns about crime and disorder,<sup>235</sup> as the “interests and feelings of victims— actual victims, victims’ families, potential victims, the projected figure of ‘the victim’—are now routinely invoked in support of measures of punitive segregation”.<sup>236</sup> According to Garland, “the new discourse of crime policy consistently invokes an angry public, tired of living in fear, demanding strong measures of punishment and protection”,<sup>237</sup> and thus lending credence to the need for criminal records, despite that at least in Canada, there has been a forty year decline in the country’s crime rate.<sup>238</sup> Instead, there is a perpetual sense of crisis, as both the public and politicians are disenfranchised with the inability of the criminal justice system to protect them from what they fear and think they need protecting from.<sup>239</sup> Garland suggests that no matter how much new legislation, organizational reform, and urgency of policy development takes place in the field of crime prevention, this ever-present possibility of victimization is something that will not go away.<sup>240</sup>

To Garland, the main feature of this ‘culture of control’ is that the public must be protected at all cost and by all measures, as there is a “new and urgent emphasis upon the need for security, the containment of danger, the identification and management of any kind of risk [as] protecting the public has become the dominant theme of penal policy”.<sup>241</sup> Garland explains that “the prison has been reinvented as a means of incapacitative restraint, supposedly targeted

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<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*

<sup>238</sup> Statistics Canada, “Canada’s Crime Rate: Two Decades in Decline”, online: <<http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015001-eng.htm>>.

<sup>239</sup> Garland, *supra* note 5, at 19.

<sup>240</sup> *Ibid.*, at 20.

<sup>241</sup> *Ibid.*, at 12.

upon violent offenders and dangerous recidivists, but also affecting masses of more minor offenders”.<sup>242</sup> As well, discriminately, “notification laws publicly mark released offenders, highlighting their past misdeeds and possible future dangers”.<sup>243</sup> Therefore, in regards to criminal records there seems a relaxation of concern about civil liberties with a new emphasis upon effective enforcement and control as the call for protection “*from* the state has been increasingly displaced by the demand for protection *by* the state”.<sup>244</sup> People with criminal records appear to be a risk that government is wholly adverse too, no matter what the statistics on recidivism,<sup>245</sup> or the fundamental principles of sentencing ask for.

There has, to Garland, been a reinvention of the prison, born from the mistaken idea that prisons work.<sup>246</sup> This increasing reliance on prisons seem to suggest that a solution for crime is not to be found “in individualized correctional treatment, the support and supervision of families, and in welfare-enhancing measures of social reform-particularly education and job creation”, but in incarceration.<sup>247</sup> As Garland states, the prison in “the course of a few decades has gone from being a discredited and declining correctional institution to a massive and seemingly indispensable pillar of contemporary social order”.<sup>248</sup> Within such thinking, preventing criminal records from being legislatively mandated will be an uphill battle, as they are believed to be a contributing sentencing factor in regards to sending people to prison.<sup>249</sup> As Louis Althusser

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<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*

<sup>245</sup> Alfred Blumstein, & Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks,” in *Criminology* Vol. 47, No. 2 (May 2009) [327-359]; & Jeffrey T. Ulmer & Darrell Steffensmeir, “The Age and Crime Relationship” in Kevin M. Beaver, J.C. Barnes, & Brian B. Boutwell eds., *The Nurture Versus Biosocial Debate in Criminology: On the Origins of Criminal Behavior and Criminality* (London: Sage Publications, 2015).

<sup>246</sup> Garland, *supra* note 5, at 14.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> Thomas, *supra* note 1, at 11.

might suggest, prisons exist because prisons are built.<sup>250</sup> In his view, the repressive ideological state apparatus culturally creates conformity and fosters the belief in safety and necessity of prison, yet in actuality, he suggests, the individual in society is but an automaton in the state's plan to facilitate and propagate its own needs.<sup>251</sup> Garland and Foucault seem likeminded, as Foucault suggests prisons "are a success, in that is what has been asked of them",<sup>252</sup> for "lawbreaking is not an accident, [nor] a more or less unavoidable imperfection",<sup>253</sup> but rather, "a positive element of the functioning of society"<sup>254</sup> wherein its role is part of a general strategy in which "every legislative arrangement sets up privileged and profitable areas where the law can be violated, others where it can be ignored, and others where infractions are sanctioned".<sup>255</sup> In this way, as Gary Gutting explains, criminality is "metastasized throughout modern society",<sup>256</sup> and so is the knee jerk response to punish (i.e., criminal records), rather than truly understand those who have transgressed legal/social boundaries.

Besides the erroneous call for more prisons, Garland discusses the expanding infrastructure of crime prevention and community safety that is fostered within an initiative much like the familiar institutions of crime control but predominantly more grassroots and local.<sup>257</sup> Garland explains them as 'preventative partnerships' that work towards the visible crime control strategies of harm and fear reduction, loss prevention, as well as security.<sup>258</sup> Within this cultural control paradigm of expulsion and exclusion, such partnerships are also "accompanied

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<sup>250</sup> Louis Althusser, "Ideology and Ideological State Apparatuses: Notes towards an investigation", in *Lenin and Philosophy*, (London: New Left Books, 1971), at 129.

<sup>251</sup> *Ibid.*

<sup>252</sup> Roger-Pol Droit, "Michel Foucault, on the Role of Prisons", (August 5, 1975) online: <<https://www.nytimes.com/books/00/12/17/specials/foucault-prisons.html>>.

<sup>253</sup> *Ibid.*

<sup>254</sup> *Ibid.*

<sup>255</sup> *Ibid.*

<sup>256</sup> Gary Gutting, *Foucault a Very Short Introduction* (New York: Oxford University Press, 2005), at 87.

<sup>257</sup> Garland, *supra* note 5, at 17.

<sup>258</sup> *Ibid.*

by patient, ongoing, low-key efforts to build up the internal controls of neighbourhoods and to encourage communities to police themselves”.<sup>259</sup> In regards to criminal records, this thinking is exemplified by proactive targeting of people through, for example, recent community initiatives between police, landlords, and residents to have not just criminal free housing, but criminal free neighbourhoods.<sup>260</sup> As explained by Simone Ispa-Landa and Charles E. Loeffler, professional organizations act as gate-keepers through obligatory licencing schemes which stipulate various exclusions from membership, therefore, preventing those who have criminal records from employment opportunities.<sup>261</sup> Additionally, they posit that starting in the 1990’s, there has been an increased visibility of criminal records where “online court dockets, jail inmate databases, parole release look-up tables, and arrest logs have made the identities of millions of individuals accessible to anyone with internet access”.<sup>262</sup> As explained, Google has had its effect and an individual’s past interaction with the criminal justice system is now not just a statistic, but an identifying factor never to be forgotten. Additionally, within civil society, the commercialization of crime control as described by Garland has led to the diversification of the traditional crime control monopoly, as specialized institutional state actors are now being subsidized by the privatization of security prevention that is at arm’s length to the government but still falls under their purview.<sup>263</sup> An example of this commercialization are the Commissionaires whose slogan is ‘Trusted-Everyday-Everywhere’, and who offer digital fingerprinting and criminal record checks in order to, as their website stipulates, “protect you by securing your identity and confirming

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<sup>259</sup> *Ibid.*

<sup>260</sup> Ottawa Police Services, *supra* note 15.

<sup>261</sup> Simone Ispa-Landa, & Charles E. Loeffler, “Indefinite Punishment and the Criminal-Record: Stigma Reports among Expungement Seekers in Illinois”, in *Criminology*, Vol. 54 No. 3 (August 2016), at 390 [Ispa-Landa & Loeffler].

<sup>262</sup> *Ibid.*

<sup>263</sup> Garland, *supra* note 5, at 17.

your law-abiding integrity”.<sup>264</sup> This compulsion towards surveillance is found within what Garland explains as new management styles and working practices, where there is an “all-pervasive managerialism that affects every aspect of criminal justice”.<sup>265</sup> Within this bureaucratization of crime control there is an “emphasis upon the cost-effective management of risks and resources [that] has produced a system that is increasingly selective in its responses to crime and offending”.<sup>266</sup> According to Garland, “there is now a well-developed practice of targeting resources [...] on crime ‘hot-spots’, career criminals, repeat victims, and high-risk offenders”.<sup>267</sup> To him, such an actuarial approach which blanket mandated criminal records show

clearly the extent to which the field continues to be marked by tensions and contradictions [...] as] the combination of cost-cutting in sectors of criminal justice that many experts regard as valuable in the long term [...] together with profligate spending on measures that are popular with the public but whose effectiveness is considered much more doubtful [...] is a continuing source of tension between sections of the practitioner community and political decision-makers.<sup>268</sup>

The criminal justice system, if not society, seems to have lost both its reason and compassion in regards to a statistical probability approach to dealing with those with criminal records. Thinking your neighbourhood is safe by only allowing people to live in it that have not previously been caught for contravening the law is an erroneous supposition. A more effective grassroots approach to building a better community might be found in encouraging people to get to know their neighbours, accepting them as they are, and building a network of mutual support and understanding.

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<sup>264</sup> The Commissionaires, *Digital Fingerprinting and Identification*, online: < <http://www.commissionaires-ottawa.on.ca/pages/services-en/fingerprinting-and-identification/>>.

<sup>265</sup> Garland, *supra* note 5, at 18.

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*, at 19.

<sup>268</sup> *Ibid.*

Correlation does not mean causation; however, Garland's index of perceptions regarding this new culture of control seems an astute reminder of why and how surveillance is now engrained within society (and how surveillance applies to criminal records). Despite his negative appraisal of Foucault, Garland still talks in a similar language of discursive reasoning and marginalization, similar to Malcolm Feeley and Jonathan Simon, who also explain the "emergence of new discourses [... in] particular, the language of probability and risk increasingly replacing earlier discourses of clinical diagnosis and retributive judgment".<sup>269</sup> To them, as it is to Garland, this new trend in penology is about identifying unruly groups in order to make them tolerable through a managerial process of imprisonment, as facilitated through surveillance.<sup>270</sup> Pat O'Malley, too, identifies an increase of social control through the impetus of increased incarceration as deterrence rather than rehabilitative ideal, actuarial styled risk adverse policy making, a new theoretical undertaking to replace the old, and a grassroots movement of the commercialization of surveillance.<sup>271</sup>

In summary, surveillance, is not just multifaceted in its theory and practice, but is also an overarching apparatus of control and manipulation through information gathering. As explained by Newburn, surveillance is a bureaucratic evolution of punishment within a risk-oriented paradigm, much like the architectural panoptic concept Bentham first borrowed from his brother, where everyone can be watched for the betterment of society but never really see who is watching. Today's panopticism, as expounded by Foucault, is a technical version that permeates all levels and recesses of society in order to keep it safe from itself. However, this

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<sup>269</sup> Malcolm M. Feeley & Jonathan Simon, "The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications", in *Criminology*, Vol. 30 No. 4, (1992), at 450.

<sup>270</sup> *Ibid.*, at 455.

<sup>271</sup> Pat O'Malley, "Policing crime risks in the neo-liberal era", in Stenson K & Sullivan R, eds., *Risk and Justice: The Politics of Crime Control in Liberal Democracies* (Portland, OR: Willian Publishing, 2001), at 155-156.

omnipresent observation, although, based on risk-aversion, if left unchecked, might become a risk from which society will need to be protected, as Garland suggests this new culture of control seems more a political tool, than pragmatic instrument of social control and progress. This trend of increased securitization and political capital encourages society feel safer with a healthy dependence on government intervention and oversight (i.e.: criminal records). However, within a process where the advice of experts is downgraded, how can the failure of practices implemented from such an unenlightened position be held liable? Instead, when discussing penal reform there is a need to innovate, base decisions on evidence and develop policy accordingly. Society seems dependent on criminal records to keep them safe; however, the egregious effects of stigma attached to criminal records might not be a necessary addition to the panoptic arsenal to make people feel safe, as the police in Canada are highly proficient at their jobs with the various other electronic technologies of surveillance at their disposal.

### **1.5- Criminal Records and Stigma**

The theoretical underpinning of stigma will be further discussed in the next section of this paper, however; it has long been a concept tied to deviance. Stigma was first an archaic punishment of history, used by the ancient Greeks in the form of a cut, burn, or tattoo given to criminals, slaves, or traitors in order to visibly identify them as morally blemished or ritually polluted persons.<sup>272</sup> In a similar vein, this paper proposes that criminal records (for certain situations) are likewise an anachronism from the past, despite their prevalent use in society today. Christianity also popularized the concept of stigma by adding another two layers of representation “to the term: the first referred to bodily signs of holy grace that took the form of eruptive blossoms on the skin; [and] the second, a medical allusion to this religious allusion,

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<sup>272</sup> Goffman 1963, *supra* note 10, at 1.

referred to bodily signs of physical disorder”.<sup>273</sup> Within such thinking, is an idea that situates stigma as a public spectacle of aberration, where marked individuals are to be avoided and shunned.<sup>274</sup>

Goffman in turn, borrowed these historical allusions to help illuminate his own understanding of stigma, which as has been explained, is the social spoiling of one’s identity as perceptions of inferiority place those affected by such negative attributes, like that of a criminal record at a disadvantage, obstructing their full and successful reintegration and participation in society. This idea is supported by Ispa-Landa and Loeffler who describe that regardless of how minor the crime one committed, or if the charges were dismissed without a conviction, a person’s criminal history stays with them long after they have been processed by the criminal justice system.<sup>275</sup> They posit that, in the past, “individuals were able to use a variety of strategies to avoid the negative consequences associated with past criminal justice contact [... as] it was unlikely to be revealed via third-party disclosure”.<sup>276</sup> However, in the present, they suggest that “web-enabled criminal record history searches and ubiquitous background checks mean that record-bearers can no longer easily conceal their past criminal justice contact”<sup>277</sup> as this mark of prior contact with the criminal justice system will now “follow individuals throughout their lives, continually impacting their opportunities for employment, education, and housing”.<sup>278</sup> Similarly, Jacobs suggests criminal records are a negative curriculum vitae or résumé that formally defines someone as a career criminal.<sup>279</sup> As such, criminal records are a lasting mark of infamy and untrustworthiness that Goffman explains allows individual’s to be differentiated from all others

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<sup>273</sup> *Ibid.*

<sup>274</sup> *Ibid.*

<sup>275</sup> Ispa-Landa & Loeffler, *supra* note 261, at 387.

<sup>276</sup> *Ibid.*, at 388.

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid.*

<sup>279</sup> Jacobs, *supra* note 14, at 2.

in society; around this means of differentiation presumptive social facts can be “attached and entangled, like candy floss, becoming then the sticky substance to which”<sup>280</sup> someone’s personal identity is socially known.<sup>281</sup> The stigma of criminal records, like the evils of sugary treats, leave a cavity in the lives of those marked, as is substantiated by Mark Hatzenbuehler, Jo Phelan, and Bruce Link, who posit that stigma is a major contributing cause of overall corrosive population health outcomes, like morbidity and mortality.<sup>282</sup> It follows that 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.<sup>283</sup>

Additionally, a connection has been identified between stigma and both the concepts of criminalization and surveillance. Lindsay Sheehan, Katherine Nieweglowski, and Patrick Corrigan explain that stigma’s labelling is a function of visibility,<sup>284</sup> and Goffman discusses visibility attached to the naming process concerning the way people are seen and allow themselves to be seen, as a determining influence to the extent of one’s stigmatization.<sup>285</sup> Goffman (like Foucault), connects modern medicine and the nation state’s bureaucratic tendency, as underwriting factors to the “basic imagery through which lay[people] currently conceive themselves”.<sup>286</sup> To him, techniques of information control how one presents oneself to

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<sup>280</sup> Goffman 1963, *supra* note 10 at 57.

<sup>281</sup> *Ibid.*

<sup>282</sup> Mark L. Hatzenbuehler, Jo C. Phelan, & Bruce G. Link, “Stigma as a Fundamental Cause of Population Health Inequalities” in *American Journal of Public Health* Vol.103, (2013), at 813.

<sup>283</sup> *Ibid.*; David Plummer & Arden McLean, “The Price of Prejudice: The Corrosive Effect of HIV-Related Stigma on Individuals and Society”, in Michael Morrissey, Myrna Bernard & Donald Bundy eds., *Challenging HIV and AIDS: A new role for Caribbean education*, (Kingston: Ian Randle Publishers, 2010), at 232-239; & Richard J. Arneson, “Shame, Stigma, and Disgust in the Decent Society”, in *The Journal of Ethics*, Vol. 11, No. 1 (March, 2007), at 31-63.

<sup>284</sup> Lindsay Sheehan, Katherine Nieweglowski, & Patrick W. Corrigan, “Structures and Types of Stigma: in Wolfgang Gaebel, Wulf Röessler & Norman Sartorius, eds., *The Stigma of Mental Illness - End of the Story?* (New York: Springer International Publishing, 2016), at 52 [Sheehan, Nieweglowski, & Corrigan].

<sup>285</sup> Goffman 1963, *supra* note 10, at 48.

<sup>286</sup> *Ibid.*, at 7.

the world;<sup>287</sup> however, the need to manage tensions generated during social contacts is secondary to that of managing information about their assumed failings.<sup>288</sup> He suggests that “when normals and stigmatized do in fact enter one another's immediate presence, [...] there occurs one of the primal scenes of sociology”.<sup>289</sup> To Goffman, the stigmatized understands the world as being divided in three: the first a forbidden place where discovery means exposure and danger, the second where those marked are painfully tolerated, and a third, where stigma is exposed without need to hide.<sup>290</sup> The increasing dissemination of criminal records leaves few places where an individual will not be judged as lacking, especially when modernity’s ever-present culture of control seems, as Garland and Ispa-Landa and Loeffler offer, to be shrinking any hiding spots for those marked by prior contact with the criminal justice system. Therefore, dependence on criminal records as a means of mitigating risk seems to have a reverberating effect of negativity throughout society. Those experiencing the stigma of their past (but forever present) mark of criminality may very well be effected by this governmentally legislated stigmatizing label.

The stigma of criminal records is not just a shadow, forever obscuring the real person from the criminal they have been labeled, but is moreover, a spotlight pointing them out for all to see. In today’s computer age, a criminal record has become an indelible mark separating those differentiated as someone unworthy to the full access of society for doing something probably every adult has done in their life: that is, making a mistake.

## **1.6- Criminal Records and Emotion**

Like stigma, the theoretical underpinnings of emotion will be further detailed in the following theory section; however, an introduction seems warranted here for context. In 55 BCE,

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<sup>287</sup> *Ibid*, at 91.

<sup>288</sup> *Ibid*, at 42.

<sup>289</sup> *Ibid*, at 13.

<sup>290</sup> *Ibid*, at 81.

Marcus Tullius Cicero suggested that humanity had “decided far more problems by hate, love, lust, rage, sorrow, joy, hope, fear, illusion, or some other inward emotion, than by reality, authority, any legal standard, judicial precedent, or statute”.<sup>291</sup> Nevertheless, this ancient wisdom in understanding emotions as the prime motivator of human action had with time been displaced by the supposed enlightened thinking of various early Western theorists. René Descartes argued that sense-based experiences were not to be trusted when discussing the world, for according to him, reality was an objective thing only to be understood through deductive reasoning.<sup>292</sup> However, his maxim, *cogito ergo sum* (I think, therefore I am) seemed to be softened within his final work where he acknowledged six primitive passions of wonder, love, hatred, desire, joy and sadness, suggesting that all other emotions were made up of their combination.<sup>293</sup> Nevertheless, his stoic cynicism,<sup>294</sup> as well as his preoccupation to graph things within planes of knowing, influenced his relegation of emotion’s significance to the human condition, as according to him, they were too unpredictable to be included in his Cartesian logic.<sup>295</sup> His thinking diffused to the legal realm, for in 1764, Cesare Beccaria posited that the criminal was a rational actor, who out of self-interest alone should be dissuaded from crime.<sup>296</sup> Likewise, Bentham and John Austin strove to associate the law with objectivity, certainty, and neutrality.<sup>297</sup> However, in contrast, critical jurisprudence argues that the law is anything but objective, as it has been shown to be

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<sup>291</sup> Marcus Tullius Cicero, *De Oratore*, I & II (55 BCE), at 178-179, online:

<[https://archive.org/stream/cicerodeoratore01ciceuoft/cicerodeoratore01ciceuoft\\_djvu.txt](https://archive.org/stream/cicerodeoratore01ciceuoft/cicerodeoratore01ciceuoft_djvu.txt)>.

<sup>292</sup> René Descartes, in Desmond M. Clarke ed., *Meditations and Other Metaphysical Writings* (London: Penguin Books Ltd., 2003), at 60-62.

<sup>293</sup> René Descartes, “The Passions of the Soul”, in John Cottingham trans., Robert Stoothoff, & Dugald Murdoch eds., *The Philosophical Writings of Descartes, vol. 1*, (Cambridge: Cambridge University Press, 1984 [1649]), at 353.

<sup>294</sup> *Ibid*, at 401 & 416.

<sup>295</sup> Alain Papaux, “From Philosophy of Science to Legal Theory”, in Logan Atkinson & Diana Majury eds., *Law, Mystery, and the Humanities: Collected Essays*, (Toronto: University of Toronto Press, 2008), at 95-96.

<sup>296</sup> Cesare Bonesana di Beccaria, *An Essay on Crimes and Punishments* [1764], at 13 & 36, online: <<http://oll.libertyfund.org/titles/beccaria-an-essay-on-crimes-and-punishments>>.

<sup>297</sup> Fitzgerald, Wright, & Kazmierski, *supra* note 28 at 5-6.

political, gendered, racialized and heteronormative.<sup>298</sup> Therefore, this longstanding reliance on legal positivism as a rational, objective and superior way of recognizing the world around us,<sup>299</sup> has, as Renata Grossi suggests fostered “the exclusion of emotion from law”.<sup>300</sup>

Susan Bandes and Jeremy Blumenthal explain that “the field of law and emotion draws from a range of disciplines in the sciences, social sciences, and humanities to shed light on the emotions that pervade the legal system”.<sup>301</sup> To them, emotions contribute to a fuller understanding of all aspects of jurisprudence, specifically “a more informed, realistic, and effective framework”.<sup>302</sup> Like Bandes and Blumenthal, Terry Maroney also suggests that the previous characterization of emotions as superfluous to a broader and more fulsome understanding of the law should be left in the past.<sup>303</sup> Instead, to her, academia’s interdisciplinary approach has turned its “attention to the intriguing issues that lie at the intersection of emotion and law”,<sup>304</sup> citing United States Supreme Court Justice William J. Brennan Jr., where he denounced “formal reason severed from the insights of passion”.<sup>305</sup> To him, passion defined as “the range of emotional and intuitive responses to a given set of facts or arguments, [...] often speed into our consciousness far ahead of the lumbering syllogisms of reason”,<sup>306</sup> which Mahony believes, enhances legal reasoning.<sup>307</sup> As well, Kathryn Abrams and Hila Keren, much like Maroney, Bandes and Blumenthal, reiterate the need to counter the misconception that law and

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<sup>298</sup> *Ibid*, at 12-13.

<sup>299</sup> *Ibid*, at 5.

<sup>300</sup> Renata Grossi, “Understanding Law and Emotion”, in *Emotion Review*, Vol. 7, No. 1 (January, 2015), at 56 [Grossi].

<sup>301</sup> Susan A. Bandes & Jeremy A. Blumenthal, “Emotion and the Law”, in *Annual Review of Law and Social Science*, Vol. 8, (2012), at 162 [Bandes & Blumenthal].

<sup>302</sup> *Ibid*.

<sup>303</sup> Terry Maroney, “Law and Emotion: a proposed taxonomy of an emerging field”, in *Law and Human Behaviour*, Vol 30, No, 2, (April, 2006), at 120 [Maroney].

<sup>304</sup> *Ibid*, at 119-120.

<sup>305</sup> William J. Jr. Brennan, “Reason, Passion, and ‘The Progress of Law’”, in *Cardozo Law Review* Vol, 3, No. 24(1988), at 17.

<sup>306</sup> *Ibid* at 10.

<sup>307</sup> Maroney, *supra* note 203, at 121.

emotion scholarship is “a novel academic pastime rather than an instrument for addressing practical problems”.<sup>308</sup> Based on the cumulative thinking of those already mentioned, and others, Grossi proposes that emotions are not blind passions, but a cognitive tool that purposefully aids in making ethical and rational choices within both the private and the public spheres.<sup>309</sup> As such, emotions need to be included in critical legal scholarship, for despite being a novel approach, they offer a genuine “method that demands that law engages with the way its processes impact upon real individuals”.<sup>310</sup> In this line of thinking consideration should be given to the potential impact that criminal records may encumber those who have had a past interaction with the criminal justice system.

The importance of emotions, despite being thought redundant to the legal process by some, as Kevin Walby, Dale Spencer, and Alan Hunt suggest, is that they have “undergone something of a renaissance”,<sup>311</sup> and perhaps a reimagining of Descartes’ axiom to read *sentio ergo sum* (I feel, therefore, I am) is warranted, as emotions do not just tell important things about how people think and feel, but they also underlie the structure of our social institutions. Consequently, I will endeavor to not just explore but moreover, understand how people with criminal records express their internalized mark of criminalization with the hope this information can aid in future policy making decisions.

## 1.7- Gender

When dealing with individuals in society, gender is a construct that should not be overlooked as there are differential impacts depending on how one presents themselves to the

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<sup>308</sup> Kathryn Abrams & Hila Keren, “Who’s Afraid of Law and the Emotions?”, in *Minnesota Law Review*, Vol. 94 (2010), at 1998.

<sup>309</sup> Grossi, *supra* note 300, at 55.

<sup>310</sup> *Ibid*, at 56.

<sup>311</sup> Kevin Walby, Dale Spencer, & Alan Hunt, “Introduction”, in Dale Spencer, Kevin Walby, & Alan Hunt, eds., *Emotions Matter: A Relational Approach To Emotions*, (Toronto: Toronto University Press, 2012), at 4 [Walby, Spencer, & Hunt].

world they live in. The idea of ‘doing gender’ was introduced by Candace West and Don Zimmerman in 1987, when they conceptualized “gender as a routine accomplishment embedded in everyday interaction”.<sup>312</sup> Judith Butler has since added to this idea, explaining that regulatory power produces the subjects it controls, in that normative categories constitute what is socially acceptable.<sup>313</sup> Therefore, ‘gender is not what is between your legs but what is between your ears,’ as social reality is not a prearranged totality but a continuum created “through language, gesture, and all manner of symbolic social sign”.<sup>314</sup> Butler has applied the concept of performativity to gender, where “performativity is a discursive practice that enacts or produces that which it names [...] in relation to conventions of authority”.<sup>315</sup> Therefore, according to West, Zimmerman, and Butler there is no binary choice between male and female, rather acting, talking, and being who you are makes you who you are. Aligned with this thinking, “Canada’s prison system is revamping its policies around transgender inmates amid growing calls to place offenders based on gender identity, not genitalia”.<sup>316</sup> However, regardless of this contemporary thinking, there as will be explained, is still a significant disparity between the historically acknowledged genders within the Canadian criminal justice system.

As is shown in 2015, of the total 992 764 *Criminal Code* violations (including traffic offenses), 235 760 (23.7%) were committed by females and 757 004 (76.3%) by males.<sup>317</sup> From these statistics it logically follows that men predominantly represent the majority of people with

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<sup>312</sup> Candace West & Don H. Zimmerman, “Doing Gender”, in *Gender and Society*, Vol. 1, No. 2, (Jun., 1987), at 125.

<sup>313</sup> Judith Butler, *Bodies That Matter*, (New York: Routledge, 1993), at 22 [Butler].

<sup>314</sup> Judith Butler, “Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory”, in *Theatre Journal*, Vol. 40, No. 4 (Dec., 1988), at 519-531, online: <<http://www.jstor.org/stable/3207893>>.

<sup>315</sup> Butler, *supra* note 313, at 13.

<sup>316</sup> Kathleen Harris, “Gender identity vs. genitalia: Prison policy changes on the way for trans inmates”, in *CBC NEWS* (December 29, 2016) online: <<http://www.cbc.ca/news/politics/federal-prisons-csc-transgender-inmates-1.3909504>>.

<sup>317</sup> Statistics Canada, Table 7: Number and percentage of females and males accused, by type of crime, 2015, online: <http://www.statcan.gc.ca/pub/89-503-x/2015001/article/14785/tbl/tbl07-eng.htm> [Statistics Canada Table 7].

criminal records in Canada, although, the proportion of women charged with criminal offences has increased in the past three decades.<sup>318</sup> As such, despite that “female offenders do clearly appear in all categories of lawbreaking behavior, they appear much less frequently in some categories than others”.<sup>319</sup> There is an obvious and significant gendered disproportion to criminalization, in volume but also in type as males are “significantly more likely to have committed a violent offense or a sexual offense”.<sup>320</sup> For females the majority of crimes committed are those characterized as less violent like theft, drug possession, and prostitution, although females are also found guilty of a high percentage of level one assault.<sup>321</sup> This type of assault however, is the most common type and concerns little to no physical harm to victims.<sup>322</sup>

As Jessie Krienert explains, the issue of masculinity and its link to criminal behavior in men is not a new one.<sup>323</sup> Edwin Sutherland and Donald Cressey, in 1924, describe how boys are socialized to act and be tough subsequently leading them towards delinquency,<sup>324</sup> and propose a differential association theory where individuals, through interaction with others, learn the values, attitudes, techniques, and motives for criminal behavior.<sup>325</sup> Richard Cloward and Lloyd Ohlin borrow this thinking in 1960 when they propose that younger gang members can learn both legitimate and illegitimate behaviors from older male role models.<sup>326</sup> They suggest that supposedly common masculine traits, such as toughness and aggression are considered necessary

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<sup>318</sup> David Burke, “Number of Women in Federal Prisons is Up, and Advocates Think They Know Why” in *CBC NEWS* (October 11, 2017) online: <http://www.cbc.ca/news/canada/nova-scotia/women-prisons-crime-nova-institution-overcrowding-1.4347197>>.

<sup>319</sup> Sandra Walklate, *Gender, Crime and Criminal Justice: second edition* (Portland: Willan Publishing, 2004), at 5.

<sup>320</sup> *Ibid* at 38; & Statistics Canada Table 7, *supra* note 317.

<sup>321</sup> Statistics Canada, Table 7 *supra* note 317.

<sup>322</sup> Statistics Canada, “Trends in Police-reported Serious Assaults”, online: <<https://www.statcan.gc.ca/pub/85-002-x/2009004/article/10930-eng.htm>>.

<sup>323</sup> Jessie L. Krienert, “Masculinity and Crime: A Quantitative Exploration of Messerschmidt’s Hypothesis”, in *Electronic Journal of Sociology* (2003) [Krienert].

<sup>324</sup> Edwin H. Sutherland, & Donald R. Cressey, *Criminology* (Philadelphia: J.B. Lipencott, 1924), at 102.

<sup>325</sup> *Ibid*, at 80-81.

<sup>326</sup> Richard A. Cloward & Lloyd E. Ohlin, *Delinquency and Opportunity: a theory of delinquent gangs* (New York: The Free Press, 1960), at 13-14.

in order to assert a strong masculine identity.<sup>327</sup> Within this ‘monkey-see-monkey-do’ understanding of deviant behavior is a removal of agency; however, by learning this behavior if even through subtle social cues there may be some residual choice involved. As well, in the sixties, Talcott Parsons (in a somewhat Freudian way) furthered engendered thinking about criminal behavior in Western societies when he suggested that ‘compulsive masculinity’ is internalized during adolescence, leading boys to engage in more delinquent behavior than girls as a need to distinguish themselves from their mother’s influence.<sup>328</sup> Jackson Toby added to this, positing that males without power as a result of lack of family influence, education, income, social and political connections, and/or material goods are more prone to violent and criminal behavior.<sup>329</sup>

In the 1980’s, despite the variability of masculine identity,<sup>330</sup> Gregory Herek discusses heterosexual masculinity within the working definition “that to be a man in contemporary American society is to be homophobic— that is to be hostile towards homosexual persons in general and gay men in particular”.<sup>331</sup> As such, masculinity is defined by the anxiety and fear from “what it is *not*— that is, not feminine and not homosexual [... as] being a man requires not being compliant, dependent, or submissive”.<sup>332</sup> However, despite Harek’s thinking applying to rule-breaking, in the context of this research the need is to understand what masculinity is in relation to criminalization, and not necessarily the dysfunctionality of the time period from where this theory originated. As such, Raewyn Connell in 1987, explains that despite multiple

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<sup>327</sup> *Ibid*, at 49-50.

<sup>328</sup> Talcott Parsons, *Social Structure and Personality* (New York: Free Press of Glencoe, 1964), at 222-224.

<sup>329</sup> Jackson Toby, “Violence and the masculine ideal: some qualitative data”, in *Annals of the American Academy of Political and Social Science*, Vol. 364, (March, 1966), at 20-21.

<sup>330</sup> Noel A. Cazenave “Race, Socioeconomic Status, and Age: The social context of American masculinity” in *Sex Roles*, Vol 11, No. 7-8 (October, 1984), at 640.

<sup>331</sup> Gregory M. Herek, “On Heterosexual Masculinity: Some Psychical Consequences of the Social Construction of Gender and Sexuality”, in *American Behavioral Scientist*, Vol. 29, No. 5 (May/June 1986), at 563.

<sup>332</sup> *Ibid*, at 568.

forms of masculinity (and femininity) the overarching understanding of hegemonic masculinity subordinates them all.<sup>333</sup> To her within contemporary Western industrialized societies, hegemonic masculinity is defined as the ascension of men over women through “the maintenance of practices that institutionalize men’s dominance over women”.<sup>334</sup>

James Messerschmidt in 1993, adds to Connell’s understanding of hegemonic masculinity, defining it as centering on “work in the paid labour market, the subordination of women, heterosexism, and the driven and uncontrollable sexuality of men”.<sup>335</sup> He explains that “refined still further, hegemonic masculinity emphasizes practices towards authority, control, competitive individualism, independence, aggressiveness, and the capacity for violence”.<sup>336</sup> In regards to criminal deviance, Messerschmidt’s masculinity hypothesis suggests that when the traditional means of demonstrating masculinity are unavailable, violent behavior is more likely to occur,<sup>337</sup> as “crime is a resource that may be summoned when men lack other resources to accomplish gender”.<sup>338</sup> Therefore, if a man does poorly at school or at his job, or in his family life, he must seek out other, alternative, “masculine-validating resources” (e.g., breaking the law).<sup>339</sup> Additionally, the nineties also saw a resurgence of Sutherland and Cressey’s differential association theory, as peer relations and masculinity leading to criminal behavior is also found in modern gang research,<sup>340</sup> and gang activity can be seen to emphasize masculine traits of accomplishment, aggressiveness, and daring behaviors (e.g., breaking the law).<sup>341</sup> However, in

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<sup>333</sup> R. W. Connell, *Gender and Power: Society, the Person and Sexual Politics* (Oxford: Polity Press, 1987), at 183.

<sup>334</sup> *Ibid.*, at 185.

<sup>335</sup> James Messerschmidt, *Masculinities and Crime: Critique and Reconceptualization of Theory* (Lanham, MD.: Rowan & Littlefield Publishers, Inc., 1993) at 82.

<sup>336</sup> *Ibid.*

<sup>337</sup> *Ibid.*, at 81.

<sup>338</sup> *Ibid.*, at 85.

<sup>339</sup> *Ibid.*, at 83.

<sup>340</sup> Irving Spergel, & Susan Grossman “The Little Village Project: a community approach to the gang problem”, in *Social Work* Vol. 42, No. 5 (September, 1997), at 457.

<sup>341</sup> Deanna L. Wilkinson, “The Social and Symbolic Construction of Violent Events among Inner City Adolescent

relation to research on inner city adolescents, as Krienert explains, masculinity has only played a minor role in the overall research and as such, is not clearly identified nor defined.<sup>342</sup>

In closing on masculinity and the proclivity of criminal records, both Connell and Messerschmidt, collaborating in 2005, determined that boys and men commit more of the conventional and the serious crimes in society than do women and girls.<sup>343</sup> As well, both explain, that “men hold a virtual monopoly on the commission of syndicated and white-collar forms of crime”,<sup>344</sup> and, that besides the generalizability of hegemonic masculinity in theorizing the relationship among masculinities and a variety of crimes, it has also “been used in studies on specific crimes by boys and men, such as rape in Switzerland, murder in Australia, football ‘hooliganism’ and white-collar crime in England, and assaultive violence in the United States”.<sup>345</sup>

### **1.7.1- Gender and Re-integration into Society**

Besides the gendered disproportion of criminal offences, there is also, as Rebecca Richardson and Shawn Flower explain, a gender disparity in regards to reintegration back into society.<sup>346</sup> Nevertheless, there are gender neutral barriers, like that of substance abuse, mental health, education, housing, and just having been incarcerated.<sup>347</sup> However, historically, structural and individual characteristics give both males and females their own unique challenges.<sup>348</sup> As males are significantly more likely to have committed a violent offense or a sexual offense, they

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Males.” (Ph.D. Thesis, Rutgers University, 1998), at 10-12.

<sup>342</sup> Krienert, *supra* note 323.

<sup>343</sup> R. W. Connell & James W. Messerschmidt, “Hegemonic Masculinity: Rethinking the Concept”, in *Gender and Society* Vol. 19, No. 6 (December, 2005), at 833.

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.*

<sup>346</sup> Rebecca L. Richardson & Shawn M. Flower, “How Gender of Ex-Offenders Influences Access to Employment Opportunities”, in *Journal of Applied Rehabilitation Counseling* Vol. 45, No. 4 (2014), at 36-37 [Richardson & Flower].

<sup>347</sup> *Ibid.*

<sup>348</sup> *Ibid.*, at 35.

are subsequently thought less dependable, lacking character, or having a higher likelihood to recidivate.<sup>349</sup> Females instead, in the majority of cases are found guilty of crimes characterized as less violent, and as such, may not face the same degree of blameworthiness; however, research also shows that women with criminal records have reported “extensive histories of emotional, physical, and sexual abuse—between 77% and 90%”,<sup>350</sup> that may limit their social functionality.<sup>351</sup> As well, females, besides being similarly under- and un-employed as males, when they are employed, “work fewer hours, make less per hour, and are often employed in non-permanent low-level or entry level occupations with little chance of advancement”.<sup>352</sup> Also, in regards to gender difference, the majority of females with criminal records were the custodial parent of minor children prior to incarceration, which causes numerous logistical problems for employment as well as volunteering and daycare.<sup>353</sup>

Notwithstanding gender, Bryan Miller and Joseph Spillane suggest that preventing recidivism is dependent upon “successful reentry and reintegration in one’s community [and] is a matter of critical import to the public’s safety”.<sup>354</sup> Unfortunately, there are, as Rick Ruddell and L. Thomas Winfree, Jr. explain, “collateral consequences [that] exist by enhancing the number of restrictions on ex-offenders, [which] make it more difficult for them to transition from law violator to a law-abiding citizen”.<sup>355</sup> Still, they insist that “irrespective of external barriers to

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<sup>349</sup> Richard Tewksbury & Matthew Lees, “Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences”, in *Sociological Spectrum* Vol. 26, No. 3 (2006), at 310.

<sup>350</sup> Nena Messina, & Christine Grella, “Childhood Trauma and Women’s Health Outcomes in a California Prison Population”, in *American Journal of Public Health*, Vol. 96 No. 10 (2006), at 1842.

<sup>351</sup> Richardson & Flower, *supra* note 346, at 36.

<sup>352</sup> *Ibid.*, at 38.

<sup>353</sup> *Ibid.*

<sup>354</sup> Bryan Lee Miller & Joseph F. Spillane, “Civil death: An examination of ex-felon disenfranchisement and reintegration”, in *Punishment & Society*, Vol. 14, No. 2 (2012), at 405.

<sup>355</sup> Rick Ruddell & L. Thomas Winfree, Jr., “Setting Aside Criminal Convictions in Canada A Successful Approach to Offender Reintegration”, in *The Prison Journal*, Vol. 86, No. 4 (December 2006), at 464 [Ruddell & Winfree, Jr.].

community reintegration, [...] there is an increasing acknowledgement of the importance of internal individual-level factors that might contribute to successful reentry [...] and] central among these internal barriers are the offenders' perceptions of themselves".<sup>356</sup> An awareness that Sarah Turnbull and Kelley Hannah-Moffat suggest, is benefitted by "promoting [a] normative lifestyle";<sup>357</sup> however, such a perception and lifestyle is somewhat elusive when clouded by feelings of self-stigma. Nevertheless, besides the re-integrative ability of a pardon or records suspension,<sup>358</sup> Richardson and Flower offer a somewhat neo-liberal possibility to counteract these barriers to reintegration as well as the stigmatizing effects of criminal records that is found in Prisoner Entrepreneurship Programs.<sup>359</sup> They explain that besides dissuading recidivism these programs teach those who have a criminal record the agential skills to support themselves; however, perhaps (for certain situations), never being subjected to a criminal records check is healthier for all involved.

### **1.7.2- Gender and Emotion(al response)**

According to cultural theorists, emotions are not just biological responses to stimuli in the environment but are, moreover, representations of social feelings that are conditioned by the norms, values, and beliefs that are inculcated through the interaction that take place living in one's culture.<sup>360</sup> Arlie Russel Hochschild agrees, suggesting that societies have an emotional culture built upon an emotional vocabulary that prescribes how groups of likeminded individuals within hierarchies of social positioning should feel and express themselves.<sup>361</sup> Gender, as

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<sup>356</sup> *Ibid*, at 465.

<sup>357</sup> Sarah Turnbull & Kelley Hannah-Moffat, "Under These Conditions: Gender, Parole and the Governance of Reintegration", in *British Journal of Criminology*, Vol. 49, No. 4, (July 2009), at 547.

<sup>358</sup> Ruddell & Winfree, Jr., *supra* note 355, at 465.

<sup>359</sup> Richardson & Flower, *supra* note 346, at 40.

<sup>360</sup> Dawn T. Robinson, "The role of cultural meanings and situated interaction in shaping emotions", in *Emotion Review*, Vol. 6, No. 3 (2014), at 189.

<sup>361</sup> Arlie Russel Hochschild, *The Managed Heart: The Commercialization of Human Feeling*, (Berkeley: University of California Press, 2003), at 56 [Hochschild: *The Managed Heart*].

explained by Stephanie Shields, is also applicable to emotions for many emotional beliefs have a gendered character in that they express an understanding of emotion that is treated as more typical, natural, or appropriate for one sex than the other.<sup>362</sup> She explains that these ‘bed-rock beliefs’ define gender and gender difference as stereotypical heuristics recruited to further delineate emotion and value in order to negotiate the culture in which one lives.<sup>363</sup> As such, Robin Simons suggests that there are prevailing emotional stereotypes found in the belief that females are emotional beings while men are believed to be excluded from the world of feelings.<sup>364</sup> Shields explains this concept empirically by describing how preschoolers predominantly identify sadness and fear with females, how adults of both sexes rate females as the more emotional sex, and, when asked to identify the most emotional person they know, undergraduates identify a woman eighty percent of the time.<sup>365</sup>

Shields posits that people acquire a rich store of beliefs as they learn to be effective functioning members of society, as beliefs about emotion encompass a network of expectations individuals develop about when, where, and how emotion should occur and what the occurrence of emotion signifies.<sup>366</sup> An example of this social phenomenon is described by Jessica Salemo and Liana Peter-Hagene within the process of jury deliberations, as an angry male juror is regarded as persuasive while an angry female juror is thought to be shrill, emotional, and therefore, unpersuasive.<sup>367</sup> As well, Leslie Brody suggests women are encouraged to feel and express powerless emotions, such as fear and sadness, while men, on the other hand, must

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<sup>362</sup> Stephanie A. Shields, *Speaking from the Heart: Gender and the Social Meaning of Emotion*, (Cambridge: Cambridge University Press, 2002), at 3 [Shields].

<sup>363</sup> *Ibid*, at 10.

<sup>364</sup> Robin W. Simon, “Sociological scholarship on gender differences in emotion and emotional wellbeing in the United States: A snapshot of the field”, in *Emotion Review*, Vol 6, No. 3, (2014), at 197.

<sup>365</sup> Shields, *supra* note 362, at 3.

<sup>366</sup> *Ibid*, at 5.

<sup>367</sup> Jessica Salemo & Liana Peter-Hagene, “One angry woman: Anger expression increases influence for men, but decreases influence for women, during group deliberation”, in *Law and Human Behavior* Vol. 39 (2015), at 581.

repress and hide these emotions, instead feeling and expressing powerful emotions, such as anger and pride.<sup>368</sup> Shields explains these foundational beliefs are so embedded within the dominant culture that they seem to embody a true nature of emotion, as in Western cultures some beliefs are explicit and easily named and recognized like that which identifies emotion as a feminine trait.<sup>369</sup>

Other beliefs; however, are so deeply embedded in society that they slip by unnoticed until they are made apparent when patterns of emotional representation in language, social institutions, or social practice are recognized.<sup>370</sup> Shields posits that the illusory appeal of emotive metaphors is so strong that even when these beliefs are not shared by marginalized or minority cultures, the bedrock beliefs of the dominant culture exert their appeal and become the standard against which all people are measured.<sup>371</sup> However, despite that culture conditions both an individual's emotional experiences and expression, it does not determine who they are, for as Hochschild (and Goffman) suggest,<sup>372</sup> individuals are capable of intentionally manipulating their emotions.<sup>373</sup> As well, regardless of gender, John Mayer, David Caruso and Peter Salovey suggest, within the concept of emotional intelligence, that different people have a varying "ability to perceive and express emotion, assimilate emotion in thought, understand and reason with emotion, and regulate emotion in the self and others".<sup>374</sup> As Thomas Carlyle posits, we are all products of our society being "fettered by chains of our own forging".<sup>375</sup>

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<sup>368</sup> Leslie Brody, *Gender, Emotion, and the Family*, (Cambridge, MA: Harvard University Press, 1999), at 282-283 [Brody].

<sup>369</sup> Shields, *supra* note 362, at 10.

<sup>370</sup> *Ibid.*

<sup>371</sup> *Ibid.*, at 10-11.

<sup>372</sup> Goffman 1956, *supra* note 125, at 70.

<sup>373</sup> Hochschild: *The Managed Heart*, *supra* note 361, at 35.

<sup>374</sup> John D. Mayer, Peter Salovey, & David R. Caruso, "Models of Emotional Intelligence", in Robert J. Sternberg ed., *Handbook of Intelligence*, (New York, NY: Cambridge University Press, 2000) at 396.

<sup>375</sup> Thomas Carlyle, *The Works of Thomas Carlyle (Complete): Critical and Miscellaneous Essays, Volumes Fourteen*, (New York: Peter Fenelon Collier Publishing, 1897), at 485.

Therefore, criminal behavior seems a gendered artefact of society, as men are disproportionately incarcerated over women for crimes that are predominantly violent and domineering in nature. Notwithstanding how one self-identifies, there seems both general and specific barriers to reintegration into society for those with criminal records. Be it substance abuse, mental health, education, housing, family, friends, past trauma, or just being incarcerated, the addition of stigma seems an extra burden, particularly when one reflects on how academia understands its detrimental effect. However, presently those who have criminal records still bear the brunt of their past mistake by being unable to fully participate and contribute in society. As such, this paper explores the emotive response to stigmatization through the ways one's criminal record is emotionally understood, although, the cultural proclivity to guard emotion and the individual ability to express and understand emotion may be an obstacle, considering its respondents are all (cis) male.

### **1.8- Filling the Gap by Contributing to the Field of Knowledge**

The preceding literature review, along with my own insights have touched upon the relevant and current understanding of criminalization, stigma, and emotion, as they relate to criminal records; however, there appears to be space for further inquiry. Agency in regards to those criminalized by the label of a criminal record seems something never fully afforded those with a past criminal history. Nevertheless, people are not doomed to the binary social predisposition of either being good or bad. When people live in conditions of subjugation, living itself is a form of agency. As such, despite that prior interaction with the criminal justice system marginalizes and restricts one's participation in society, people's ability to adapt and edit their lives in order to avoid the stereotypical social narrative that is presently provided them is something to be further investigated (notwithstanding the coping mechanism that Goffman and

Thomas LeBel discuss in the proceeding theory section on stigma).<sup>376</sup> Also, despite that Wing Hong Chui and Kevin Kwok-Yin Cheng, discuss self-stigma in a similar qualitative manner as this research, albeit concerning young adults in Hong-Kong, they suggest that “very little research has been conducted on the experiences of returning offenders”.<sup>377</sup> As well, Ispa-Landa, and Loeffler suggest in an American context that despite criminal records being more publicly accessible than ever before, there is “a lack of knowledge about how record-bearers seek to overcome the negative consequences associated with a visible criminal record”.<sup>378</sup>

Accordingly, they explain that information concerning the lived experiences of criminal-record bearers is in need of further understanding.<sup>379</sup> Furthermore, and again in an American context, not a Canadian one, Moore, Tangney, and Stuewig describe that within the greater community stigma can interfere with personal functioning, leading to maladaptive behaviors, poor mental health, and difficulty participating in society; however, according to them, little research has been conducted in regards to these detrimental effects upon those who have criminal records.<sup>380</sup>

Since more investigation is asked for and despite the very recent interest of the federal government to address the stigma of criminalization,<sup>381</sup> Canadian research concerning those marked by past interaction with the criminal justice system seems undeveloped. Nevertheless, this recent political interest in overhauling the current records suspension framework,<sup>382</sup> highlights the timely relevance of this thesis. Additionally, in relation to an emotional

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<sup>376</sup> Goffman 1963, *supra* note 10, at 9; & Thomas P. LeBel, *Invisible stripes? Formerly Incarcerated Person's Perceptions of Stigma*, (PhD Dissertation, State University of New York at Albany, School of Criminal Justice, 2006), at 48 [LeBel 2006].

<sup>377</sup> Wing Hong Chui & Kevin Kwok-Yin Cheng, “The Mark of an Ex-Prisoner: Perceived Discrimination and Self-Stigma of Young Men after Prison in Hong Kong”, in *Deviant Behavior*, Vol. 34, (2013), at 671 [Chui & Cheng].

<sup>378</sup> Ispa-Landa & Loeffler, *supra* note 255, at 387.

<sup>379</sup> *Ibid.*, at 391.

<sup>380</sup> Kelly E. Moore, June P. Tangne, & Jeffrey B. Stuewig, “The Effects of Stigma on Criminal Offenders’ Functioning: A longitudinal mediational model”, in *Deviant Behavior*, Vol. 37, No. 2 (February, 2016), at 196.

<sup>381</sup> Crawford, *supra* note 226.

<sup>382</sup> *Ibid.*

understanding of criminal records, Grossi explains that “the relationship between law and emotion remains undertheorized”,<sup>383</sup> and Maroney too, asks for more insight on various yet explored emotions to help create a more fulsome understanding of what she explains as the emotion-centered approach to law and emotion scholarship.<sup>384</sup> As well, Bandes and Blumenthal suggest a future issue to be addressed is consideration of the part “emotion plays providing an impetus for legislation and what role legislation has in [...] giving voice to constituent emotion”.<sup>385</sup> As such, this thesis will endeavor to contribute to filling these voids, as people with criminal records are both products and members of Canadian society, and by understanding how individuals experience living with their legislatively mandated stigmatizing mark today can help better inform contemporary policy conversations tomorrow.<sup>386</sup>

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<sup>383</sup> Grossi, *supra* note 300, at 58.

<sup>384</sup> Maroney, *supra* note 303, at 134.

<sup>385</sup> Bandes & Blumenthal, *supra* note 301, at 175.

<sup>386</sup> Sarah B. Berson, “Beyond the Consequences-Understanding Collateral Consequences”, in *National Institute of Justice*, Vol. 272 (September, 2013), at 27.

## Chapter 2- Theoretical Framework

Sir Arthur Conan Doyle explains through Sherlock Holmes that “it is a capital mistake to theorize before one has data [as] insensibly one begins to twist facts to suit theories, instead of theories to suit facts”.<sup>387</sup> Therefore, in this section, in order to contribute to the knowledge gap concerning self-stigma and the applicability of emotion within legal thinking, and to address my experience and those of my research participants, I outline the way I frame the research with theories providing comprehensive conceptual understanding of the phenomena.<sup>388</sup> The theoretical underpinnings of symbolic interactionism, as well as a further understanding of stigma and emotions focus this project by guiding my research question(s) and the selection of the relevant methodology to best understand the social problem that is the self-stigma of criminal records.<sup>389</sup> Additionally, these theoretical frameworks, despite being used with imagination and flexibility, ensure the accountability of my work by recognizing my positionality and inviting self-reflectivity.<sup>390</sup>

### 2.1- Symbolic Interactionism

J. Patrick Williams describes symbolic interactionism as a theoretical perspective “grounded in the study of the meanings that people learn and assign to the objects and actions that surround their everyday experiences”.<sup>391</sup> Although, conceptualized by George Herbert Mead, it was further refined by his students at the University of Chicago who posthumously consolidated his ideas into a collected body of works entitled *Mind, Self, and Society*.<sup>392</sup>

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<sup>387</sup> Sir Arthur Conan Doyle, *The Adventures of Sherlock Holmes*, (New York: Dover Publications Inc., 2009), at 5.

<sup>388</sup> Vincent A. Anafara Jr., “Theoretical Frameworks”, in Lisa M. Given ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2* (London: Sage Publications Inc., 2008), at 871 [Anafara Jr.].

<sup>389</sup> *Ibid.*, at 872.

<sup>390</sup> *Ibid.*

<sup>391</sup> J. Patrick Williams, “Symbolic Interactionism”, in Lisa M. Given ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2* (London: Sage Publications Inc., 2008), at 848-849 [Williams].

<sup>392</sup> *Ibid.*, at 849.

According to George Cronk, Mead’s philosophically-based social behaviorism suggests that an individual’s mind and self are socially emergent as everything that can be known must first be experienced and then be given meaning,<sup>393</sup> that Mead explains is then reified through social interaction,<sup>394</sup> and as such, he understands the individual in society as a “phenomena of [...] human experience”.<sup>395</sup> Mead’s student, Herbert Blumer, who also borrowed the thinking of other social scientists like Charles Horton Cooley,<sup>396</sup> refined symbolic interactionism into a qualitative sociological perspective, giving it an enduring place in academia through his own collection of works entitled *Symbolic Interactionism: Perspectives and Method*.<sup>397</sup> Within this treatise, he sets out three guiding tenets: the first explains that “human beings act toward things on a basis of the meaning that the things have for them”.<sup>398</sup> To Blumer, these things that people attach meaning to include everything and anything that an individual is aware of in the world.<sup>399</sup> The second tenet of symbolic interactionism concerns how “the meaning of such things is derived from, or arises out of, the social interactions that one has”.<sup>400</sup> Blumer’s third tenet states that “meanings are handled in, and modified through, an interpretive process used by the person in dealing with the things [they] encounter”.<sup>401</sup> Therefore, as Williams suggests, meaning is not an arbitrary or inherent thing but rather a learned process where significance is assigned through interaction

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<sup>393</sup> George Cronk, “George Herbert Mead (1863-1931)”, in *The Internet Encyclopedia of Philosophy: a peer reviewed academic resource*, online: <<http://www.iep.utm.edu/mead/>>.

<sup>394</sup> George Herbert Mead, *Mind, Self, and Society*, C.W. Morris ed., (University of Chicago 1934), at 191.

<sup>395</sup> *Ibid.*, at 1.

<sup>396</sup> Michael J. Carter & Celene Fuller, ‘Symbolic Interactionism’, in *Sociopedia.isa*, (2015), online: <<http://www.sagepub.net/isa/resources/pdf/Symbolic%20interactionism.pdf>>, at 10 [Carter & Fuller].

<sup>397</sup> Williams, *supra* note 391, at 849-850.

<sup>398</sup> Herbert Blumer, *Symbolic Interactionism: Perspectives and Method* (Berkeley: University of California Press, 1969), at 2 [Blumer].

<sup>399</sup> *Ibid.*

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.*

with people, the interacted thing, and/or a mediated socialization process like television, magazines, music, and the internet.<sup>402</sup>

Blumer's framework, Gary Fine and Ken Sansdstrom suggest, provides an emphasis on micro-processes through which people construct meanings, identities, and consensus and in doing so highlight how symbols, interaction, and human agency serve as the cornerstones of social life.<sup>403</sup> Blumer proposes a working understanding of our experienced worlds and at these shared intersections, culture is created.<sup>404</sup> Similarly, Ken Plummer suggests societies "are a vast matrix of 'social worlds' constituted through the symbolic interactions of 'self' and 'others'".<sup>405</sup> However, unanimity is not a guarantee. The same symbol can have different meanings for different people leading them to act differently based on the same symbol; as meanings are malleable social artifacts that can change with subsequent interactions.<sup>406</sup> Nonetheless, this variability is not a negative, as symbolic interactionism gives the researcher the ability to study human behaviour as the fundamental social unit that it is. Blumer suggests, such analysis "lays bare the generic nature of society".<sup>407</sup> As such, and as Williams explains, "symbolic interactionists do not study individuals; they study the social actions in which individuals engage"<sup>408</sup> as "most human actions take account of other people, symbolic interactionism

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<sup>402</sup> Williams, *supra* note 391, at 850-851.

<sup>403</sup> Gary Fine & Ken Sansdstrom, "Symbolic Interactionism", in *Oxford Bibliographies*, (September, 2014), online: < <http://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0061.xml>>.

<sup>404</sup> Blumer, *supra* note 398, at 106-107.

<sup>405</sup> Ken Plummer, "World in the Making: Symbolic Interactionism in the Twentieth Century", in Bryan S. Turner ed., *The Blackwell Companion to Social Theory: second edition*, (Oxford: Blackwell Publishers, 2000), at 194 [Plummer 2000].

<sup>406</sup> Williams, *supra* note 391, at 850-851.

<sup>407</sup> Blumer, *supra* note 398, at 70.

<sup>408</sup> Williams, *supra* note 391, at 851.

provides an inductive explanation of the creation, maintenance, and change in society”<sup>409</sup> for “society is created on a moment-by-moment basis by people acting socially”.<sup>410</sup>

As Plummer suggests, “interactionist theory can guide the study of any and everything social: though what will be discovered is always a matter of empirical investigation”.<sup>411</sup>

Likewise, Blumer proposes that

symbolic interactionism is a down-to-earth approach to the scientific study of human group life and human conduct. Its empirical world is the natural world of such group life and conduct [as] it lodges its problems in this natural world, conducts its studies in it, and derives its interpretations from such naturalistic studies.<sup>412</sup>

However, as Sheldon Stryker interprets Mead’s emphasis on symbols, negotiated meaning, and the social construction of society, he suggests that the roles people are given and the roles people take are dependent upon a macro-level approach, as they demonstrate the structural aspect of interaction.<sup>413</sup> To Stryker, Blumer’s improvisational micro-nature of interaction is overlaid by various levels of social structures that influence the networks of relationships that create them, for to him these roles (or labels) represent “symbolic categories [that] serve to cue behavior”.<sup>414</sup> Building on this, Michael Carter and Celene Fuller suggest that when roles are attached to social positioning they “may be analyzed as predictors of future behavior for individuals in various social categories”.<sup>415</sup> Nonetheless, as Blumer posits, sociology is not overly concerned with macro-structures; to him “human society is to be seen as consisting of acting people, and the life of the society is to be seen as consisting of their actions”.<sup>416</sup>

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<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> Plummer 2000, *supra* note 405, at 194.

<sup>412</sup> Blumer, *supra* note 398, at 49.

<sup>413</sup> Sheldon Stryker, *Symbolic Interactionism: A Social Structural Version* (Menlo Park, CA: Benjamin/Cummings Publishing Co., 1980), at 57.

<sup>414</sup> *Ibid.*

<sup>415</sup> Carter & Fuller, *supra* note 396, at 3.

<sup>416</sup> Blumer, *supra* note 398, at 85.

In regards to my purposes, both the micro-and macro understanding of symbolic interactionist thinking are beneficial, as I want to understand aspects of how people with criminal records live in society. The proper way to accomplish this is to investigate various aspects of their experiences. As Carter and Fuller suggest, using sympathetic introspection, and self-reflexivity to explore my research participants and my own categories of meaning will uncover a more fulsome understanding of our experience of stigma.<sup>417</sup> To this end I examine how we each emotionally explain our particular situation in society.<sup>418</sup> In closing, Williams, Plummer, Stryker, as well as Carter and Fuller explain that with time Blumer's ability to synthesize Mead's concepts into a cohesive theory has led to various methodological implications within the sociological tradition.<sup>419</sup> These traditions apply specifically to my research, as symbolic interactionism, besides being historically connected to criminalization and labelling theory, also relates to the theory of stigma and theories of emotions.<sup>420</sup> These will be discussed further, as they constitute a substantial part of this paper's theoretical foundation.

## 2.2- Stigma

Émile Durkheim, as a founding figure of sociology, touches upon the theory of stigma in 1895 when he asks his readers in *The Rules of Sociological Method* to,

[i]magine a society of saints, a perfect cloister of exemplary individuals. Crimes, properly so called, will there be unknown, but faults which appear venial to the layman will create there the same scandal that the ordinary offense does in ordinary consciousness. If, then, this society has the power to judge and punish, it will define these acts as criminal and will treat them as such.<sup>421</sup>

This macro-social thinking exemplifies the ability of society to exert a powerful force on the

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<sup>417</sup> Carter & Fuller, *supra* note 396, at 3.

<sup>418</sup> Blumer, *supra* note 398, at 85.

<sup>419</sup> Williams, *supra* note 391, at 852; Carter & Fuller, *supra* note 396, at 2; & Plummer 2000, *supra* note 405, at 204.

<sup>420</sup> Williams, *supra* note 391, at 852.

<sup>421</sup> Emile Durkheim, *The Rules of Sociological Method*, George E.G. Catlin, ed., Sarah A. Solovay & John H. Mueller, trans., (New York: The Free Press, 1964 [1895]), at 68-69 [Durkheim].

individuals that form it, as norms, beliefs, and values make up a collective consciousness or a shared way of understanding and behaving in the world.<sup>422</sup> As Durkheim posits, this collective consciousness binds individuals together, thus creating social integration,<sup>423</sup> particularly when ‘society has the power to judge and punish’. However, despite not mentioning stigma specifically, Durkheim’s thinking as explained by Elia Mligo “opens up a way towards understanding [it] as a phenomenon in human relationships”.<sup>424</sup>

A little closer in history, and from a micro-social perspective, both Charles Horton Cooley in 1902 and George Herbert Mead also help to cultivate the concept of stigma. Cooley does so in his theory of the looking-glass self as he describes the development of one's self-identity in society being mediated through one's interpersonal interactions based around feelings of pride and shame.<sup>425</sup> Mead nurtures the foundation of the concept as well, explaining in 1934 that the self emerges out of “a special set of social relations with all other individuals”.<sup>426</sup> Additionally, in regards to a universal understanding of an interrelation-self, Jacques Lacan, in 1949, although from France not Chicago and from a psycho-analytical perspective not the American sociological tradition,<sup>427</sup> discusses how as human beings we develop the notion of who we are based on a tension of how we think other people see us.<sup>428</sup> As such, despite Cooley, Mead, and Lacan not mentioning stigma per-se, they, like Durkheim, are invested in the social

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<sup>422</sup> Kenneth Smith, *Émile Durkheim and the Collective Consciousness of Society: A Study in Criminology*, *Key Issues in Modern Sociology*, (London: Anthem Press, 2014), at 17-18.

<sup>423</sup> *Ibid.*

<sup>424</sup> Elia Mligo, *Jesus and the Stigmatized: Reading the Gospel of John in a Context of HIV/AIDS-Related Stigmatization in Tanzania*, (University of Oslo: 2009), at 40.

<sup>425</sup> Charles Horton Cooley, *Human Nature and the Social Order*, (New York: Scribner's, 1902) at 96 [Cooley].

<sup>426</sup> George Herbert Mead, *supra* note 394, at 156-157.

<sup>427</sup> Judith Feher Gurewich, “Toward a New Alliance between Psychoanalysis and Social Theory”, in David Pettigrew & Francois Raffoul eds., *Disseminating Lacan* (New York: State University of New York Press, 1996), at 164.

<sup>428</sup> Jacques Lacan, “The Mirror-Stage as Formative of the I as Revealed in Psychoanalytic Experience”, trans. Alan Sheridan in *Écrits: A Selection*, (New York: W.W. Norton & Co., 1977 [1949]).

fact that a person's self-image is dependent upon the intersubjective interactions and perceptions of others, a concept that comes to full bloom through Erving Goffman, who in 1963 establishes stigma within academia from both a socially labeled and constructed interpretation.<sup>429</sup>

To Goffman, stigma is a micro-social phenomenon whereby an individual with an attribute that is perceived as deeply discrediting by their society is rejected as a result of that attribute.<sup>430</sup> To him, stigma is possessed by those who are discredited, being people whose stigma is clearly known or visible, and those who are discreditable, being people whose stigma is unknown and thus is concealable.<sup>431</sup> Consequently, in today's technologically advanced world people with criminal records are to be forever discredited, as stigma is a complex inter-relational product, where both groups and people who are understood to be so labeled in society with a "failing, a shortcoming, and a handicap [...] constitute a special discrepancy between"<sup>432</sup> their virtual (how society perceives them based on assumptions and personal beliefs) and actual (how the individual embodies themselves) social identity.<sup>433</sup> Therefore, as Goffman posits, it is from within this misattribution where stereotypes are given power,<sup>434</sup> and likewise, from within human interaction, he explains that stigma (much like criminalization) has the ability to pollute one's actual self by removing one's normalcy due their stigmatized virtual identity becoming the dominant mode of knowledge and truth.<sup>435</sup>

In *Stigma: Notes on the Management of Spoiled Identity*, Goffman mentions three main types of stigma: abominations of the body, blemishes of individual character, and tribal

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<sup>429</sup> Newburn, *supra* note 131, at 223.

<sup>430</sup> Goffman 1963, *supra* note, 10 at 3.

<sup>431</sup> *Ibid.*, at 41-42.

<sup>432</sup> *Ibid.*, at 3-4

<sup>433</sup> *Ibid.*

<sup>434</sup> *Ibid.*, at 3.

<sup>435</sup> *Ibid.*, at 15-16.

stigma.<sup>436</sup> He discusses a fourth type later on that he describes as courtesy stigma.<sup>437</sup> The first concerns abominations of the body like that of physical deformities and as such, does not apply to an understanding of criminal records.<sup>438</sup> However, the second type of stigma, that of blemishes of individual character seems applicable to criminal records as this type of stigma presents itself in traits of dishonesty, treachery, unbridled passion, and weak will,<sup>439</sup> all things associated to some degree in society with breaking the law. The third type he categorized is tribal stigma, and despite being explained as relating to race, nation, and religion,<sup>440</sup> is also relevant to criminal records. As Devah Pager suggests, everyone who has broken the law is similarly situated in society, for those who have been marked by past contact with the criminal justice system

are institutionally branded as a particular class of individuals [... as] the 'negative credential' associated with a criminal record represents a unique mechanism of stratification, in that it is the state that certifies particular individuals in ways that qualify them for discrimination and social exclusion.<sup>441</sup>

However, it is not just the state which facilitates stigma around criminal records. Similarly, Terry Thomas explains that people with criminal records are equally positioned in society for their mark of unacceptable behaviour is placed upon them by their fellow citizens.<sup>442</sup> The fourth type of stigma mentioned by Goffman is described as courtesy-stigma as it can spread from the stigmatized individual to their close connections.<sup>443</sup> Chris Hannem further delineates this within the familial context as sticky-stigma in that parents, siblings, spouses, children, and other

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<sup>436</sup> *Ibid*, at 4.

<sup>437</sup> *Ibid*, at 30.

<sup>438</sup> *Ibid*, at 4.

<sup>439</sup> *Ibid*.

<sup>440</sup> *Ibid*.

<sup>441</sup> Devah Pager, "The Mark of a Criminal Record" in *American Journal of Sociology*, Vol. 108, No. 5 (2003), at 942.

<sup>442</sup> Thomas, *supra* note 1, at 2.

<sup>443</sup> Goffman 1963, *supra* note 10, at 30.

relatives become enmeshed in the stigma of their loved one's criminalization.<sup>444</sup> Likewise, John Pryor, Glenn Reeder, and Andrew Monroe, posit an understanding of associative-stigma as a process where the "companions of stigmatized persons are discredited [...] be they friends, family, or acquaintances".<sup>445</sup> However, regardless of the type stigma, Goffman explains that each carries "the same sociological feature [...] in that] an individual who might have been received easily in ordinary social intercourse possesses a trait that can obtrude itself upon attention and turn those of us whom they meet away [...] for they possesses a stigma, or an undesired differentness from what [...] was anticipated".<sup>446</sup>

Since Goffman's initial intuitive foray into stigma, the concept has moved on from his original sociological categorizations, and as explained by Bruce Link and Jo Phelan, has been subsumed and expanded on by "psychologists, criminologists, anthropologists, political scientists, and social geographers".<sup>447</sup> Despite the variability surrounding "the nature, sources, and consequences of stigma",<sup>448</sup> as "long as investigators are clear as to what is meant by stigma when the term is used"<sup>449</sup> then research within whatever field should be amenable to the appropriation, for as Butler suggests "the unanticipated reappropriation of a given work in areas for which it was never consciously intended are some of the most useful".<sup>450</sup> As such, Link and Phelan, from a social-psychology perspective have spent their academic careers trying to better understand stigma, explaining it as a four-step process.

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<sup>444</sup> Stacey N. Hannem, *Marked by Association: Stigma, Marginalization, Gender, and the Families of Male Prisoners in Canada*, (Ph.D. Thesis, Carleton University Department of Sociology & Anthropology, 2009), at iii.

<sup>445</sup> John B. Pryor, Glenn D. Reeder, & Andrew E. Monroe, "The infection of bad company: stigma by association", in *Journal of Personality and Social Psychology* Vol. 102 (2012), at 224.

<sup>446</sup> Goffman 1963, *supra* note 10, at 5.

<sup>447</sup> Bruce G. Link & Jo C. Phelan, "Conceptualizing Stigma", in *Annual Review of Sociology*, Vol. 27 (August, 2001), at 365 [Link & Phelan 2001].

<sup>448</sup> *Ibid.*, at 363.

<sup>449</sup> *Ibid.*, at 365.

<sup>450</sup> Butler, *supra* note 313, at 19.

To them, the first component is distinguishing and labelling difference, which concerns the social process of identifying which human differences are salient and therefore worthy of labeling.<sup>451</sup> This is determined by acquiescing to a significant oversimplification that allows group formation (e.g., criminal/non-criminal), and that these socially relevant differences differ vastly according to time and place (e.g., once a criminal always a criminal).<sup>452</sup> The second element, has to do with associating human difference with negative attributes, and is grounded in Goffman's idea of stigma, as it concerns linking socially relevant and labeled differences with stereotypes, in a way that they become 'automatic' (e.g., people with criminal records are criminals).<sup>453</sup> This includes an ingrained knee-jerk prejudicial social response towards the stigmatized as portrayed in the fear and distrust associated with people who have a criminal record. According to Link and Phelan this facilitates 'cognitive efficiency' as these stigmatizing "categories and stereotypes are used in making split-second judgments and thus appear to be operating pre-consciously".<sup>454</sup> The third step concerns separating 'Us' from 'Them,' which facilitates separation with little or no hesitation, enabling this distinct separate level of difference to dehumanize those within the stereotype (i.e., criminalization).<sup>455</sup> The last feature of stigmatization according to Link and Phelan is status loss and discrimination, which contributes to individuals inherently being "labeled, set apart, and linked to undesirable characteristics".<sup>456</sup> This in turn constructs a collective social rationale for devaluing, rejecting, and excluding those with stigma that leads them to experience status loss,<sup>457</sup> discrimination,<sup>458</sup> and "disadvantage

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<sup>451</sup> Link & Phelan 2001, *supra* note 446, at 367-368.

<sup>452</sup> *Ibid.*

<sup>453</sup> *Ibid.*, at 368.

<sup>454</sup> *Ibid.*, at 368-369.

<sup>455</sup> *Ibid.*, at 370.

<sup>456</sup> *Ibid.*, at 370-371.

<sup>457</sup> *Ibid.*, at 371.

<sup>458</sup> *Ibid.*, at 372.

when it comes to a general profile of life chances like income, education, psychological well-being, housing status, medical treatment, and health”.<sup>459</sup> This characterization of stigma has become better known as public-stigma (or perceived-stigma) and, as explained by Patrick Corrigan and Jessica Walton, is “the negative reactions towards individuals as displayed by the general population”.<sup>460</sup>

Additionally, within this labelling process of public-stigma, its social construction seems to also emphasize the role of various types of power as the engine in the production of it.<sup>461</sup> As such, in 2014, Link and Phelan further refined their understanding of Goffman’s original concept, as well as their own, this time adding a macro-social context by defining stigma’s power much along the lines of Foucault’s thinking with stigma being a tool to exploit, control, and exclude.<sup>462</sup> In their new iteration, the power of stigma and its capacity to marginalize others is explained by its ability to keep those stigmatized down, in, and away.<sup>463</sup> ‘down’, as wealth, power, and social status can be attained when one group dominates or exploits another;<sup>464</sup> ‘in’, as the enforcement of social norms regulate most if not all activity<sup>465</sup>; or ‘away’, as society is historically adverse to those who are thought different.<sup>466</sup> Consequently, to them, stigma power occurs where stigma is used as “a resource that allows [people] to obtain an ends they desire [... as] stigma processes achieve the aims of stigmatizers with respect to the exploitation,

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<sup>459</sup> *Ibid.*, at 371.

<sup>460</sup> Patrick W. Corrigan & Jessica L. Walton, “Stigma and Offenders with Mental Illness”, in Jane L. Wood & Theresa A. Gannon eds., *Public Opinion and Criminal Justice: Context, Practice and Values* (Portland, OR: Willan Publishing, 2009), at 217 [Corrigan & Walton].

<sup>461</sup> *Ibid.*, at 375.

<sup>462</sup> Bruce Link, & Jo Phelan, “Stigma Power”, in *Social Science & Medicine*, Vol. 103, (2014), at 24 [Link & Phelan: 2014].

<sup>463</sup> *Ibid.*, at 25.

<sup>464</sup> *Ibid.*

<sup>465</sup> *Ibid.*

<sup>466</sup> *Ibid.*

management, control or exclusion of [stigmatized] others”.<sup>467</sup> Such thinking is seen in the Canadian government’s insistence on criminal records as a means of keeping the country safer, and is discussed by Garland where within his culture of control, there is a need to label and surveil, especially when the capillary action of stigmas marginalizing power is taken up not just by the states ideological apparatus, or strangers but friends, family, and the stigmatized, as well.

### **2.2.1- Self-Stigma**

Time and study have developed Goffman’s original thinking and from this corpus of knowledge the pervasive stigmatizing social structure made academically popular by him has now been further organized around what Link and Phelan similarly explain as a “relationship of interrelated components”.<sup>468</sup> However, despite this theoretical foundation there is still a need to further complement this paper’s understanding of the interconnected social consequences of self-stigma of which structural-stigma and multiple-stigma are also a part.<sup>469</sup>

Self-stigma concerns an individual’s propensity to internalize societal stereotypes by incorporating the negative reactions perpetuated by public-stigma into their own self-concept.<sup>470</sup> Within this thinking, people marked by prior interaction with the criminal justice system, according to More, Tangney, and Stuewig, upon conviction receive the stigmatizing label ‘criminal offender’ that allows the possibility of existing stereotypes about criminalized people to be integrated into who they are as a person.<sup>471</sup> Sheehan, Nieweglowski, and Corrigan theorize self-stigma as a three step process with the first being awareness, in that individuals are cognizant of the relationship between their criminalization and corresponding stereotypes (e.g.,

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<sup>467</sup> *Ibid*, at 24.

<sup>468</sup> Link & Phelan 2001, *supra* note 447, at 367.

<sup>469</sup> Sheehan, Nieweglowski, & Corrigan, *supra* note 284, at 50-55.

<sup>470</sup> *Ibid*, at 51.

<sup>471</sup> More, Tangney, and Stuewig *supra* note 22, at 206.

people with criminal records are devalued in society).<sup>472</sup> The second factor concerns agreement, in that the individual is aware of the stereotype and they endorse it (e.g., yes, people with criminal records are worthless).<sup>473</sup> The third factor concerns application, in that the recognized and endorsed stereotypes are applied to the individual by the individual themselves (e.g., since I have a criminal record, then I must be valueless).<sup>474</sup> Within this awareness, agreement and application of whatever categorization the label endorses, self-stigma is a robust predictor of poor functioning in society, as those who are affected by it are disadvantaged.<sup>475</sup>

James Livingston and Jennifer Boyd posit that self-stigma has a negative correlation to hope, self-esteem, and empowerment,<sup>476</sup> as well as self-efficacy as explained by Georg Schomerus *et al.*,<sup>477</sup> and academic performance and health according to Brenda Major and Laurie O'Brien.<sup>478</sup> Also, Dzmitry Krupchanka and Graham Thornicroft suggest that “compared to the non-stigmatized, members of stigmatized groups are at a greater risk for mental and physical health problems, such as depression, hypertension, coronary heart disease, and stroke”.<sup>479</sup> Additionally, Johanne Bratbo and Anja Kare Vedelsby advise that the more that stigma permeates a person’s self-perception, the bigger the risk of self-stigma, and even more so when the treatment is perceived as unfair.<sup>480</sup> Therefore, mandated criminal records, besides being an

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<sup>472</sup> Sheehan, Nieweglowski, & Corrigan, *supra* note 284, at 51.

<sup>473</sup> *Ibid.*

<sup>474</sup> *Ibid.*

<sup>475</sup> *Ibid.*

<sup>476</sup> James D. Livingston & Jennifer E. Boyd, “Correlates and Consequences of Internalized Stigma for People Living with Mental Illness: a systematic review and meta-analysis”, in *Social Science and Medicine*, Vol. 71, No. 12 (December, 2010), at 2150.

<sup>477</sup> Georg Schomerus *et al.*, “Self-stigma in Alcohol Dependence: Consequences for drinking refusal self-efficacy”, in *Drug and Alcohol Dependence*, Vol. 114 (2011), at 15.

<sup>478</sup> Brenda Major & Laurie T. O'Brien, “The Social Psychology of Stigma” in *Annual Review of Psychology*, Vol. 56 (2005), at 393.

<sup>479</sup> Dzmitry Krupchanka & Graham Thornicroft, “Discrimination and Stigma”, in Wolfgang Gaebel, Wulf Rössler, & Norman Sartorius eds., *The Stigma of Mental Illness - End of the Story?* (New York: Springer International Publishing, 2016), at 129.

<sup>480</sup> *Ibid.* at 331.

indelible mark on someone's identity and depending upon the individual, might also suggest the possible attachment of a persuasive inclusion of self-stigma too.

Additionally, when discussing self-stigma, besides public-stigma, structural-stigma is also relevant as it concerns how the policies of government and private institutions limit opportunities for people with a discrediting attribute, either intentionally or unintentionally,<sup>481</sup> much as criminal records do. Intentional structural-stigma around criminal records prevents people from equal opportunities in life, such as volunteering and employment, while unintentional structural-stigma around criminal records involves biased media characterizations, and prevents full integration within the community.<sup>482</sup> Both intentional and unintentional examples of structural-stigma can be seen in the W-5 exposé regarding end of life care for those with prior interaction with the criminal justice system, as nursing homes consider using criminal records checks to exclude people marked by their criminal record from admittance.<sup>483</sup> As well, multiple-stigma is another 'relationship of interrelated components' pertinent to the understanding of self-stigma, as it recognizes that "those who belong to more than one socially disadvantaged group may have multiple identity statuses and experience [numerous] stigmas".<sup>484</sup> Be it mental health status, physical disability, substance abuse problems, ethnic or gender status, or other stigmatizing conditions",<sup>485</sup> as is explained by Stephanie Hartwell, people with criminal records may suffer more than one type of prejudice.<sup>486</sup> As such, the effects of stigmatization could be multiplicative and differentially impact facets of life, as this additional stress may

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<sup>481</sup> *Ibid*, at 53.

<sup>482</sup> *Ibid*.

<sup>483</sup> Marleen Trotter, "W5 investigates cases of sexual assault in Ontario nursing homes" in *CTV W-5*, online: <<http://www.ctvnews.ca/w5/w5-investigates-cases-of-sexual-assault-in-ontario-nursing-homes-1.2849923>>.

<sup>484</sup> *Ibid*, at 55.

<sup>485</sup> *Ibid*.

<sup>486</sup> Stephanie Hartwell, "Triple-Stigma: Persons with Mental Ill-ness and Substance Abuse Problems in the Criminal Justice System", in *Criminal Justice Policy Review*, Vol. 13, No. 1 (March, 2004), at 84.

increase the likelihood of internalizing discriminatory treatment.<sup>487</sup> In regards to this thesis, it should be noted that of my respondents one identified himself as “bi-racial” and another, despite being of indigenous descent, referred to himself as “Caucasian but ‘all’”, having grown up in public housing surrounded by a myriad of people of varying ancestry. (For further information concerning all interviews see Appendix D).

In closing on types of stigma, be they Goffman’s original or some newer iteration, there is a commonality in that they are harmful and carry negative repercussions. Link *et al.*, describe a modified labelling theory that attempts to address not just the power dynamics which result in the stereotypes, prejudice, and discrimination of stigma but also the negative outcomes caused by the social inculcation of such categorizations.<sup>488</sup> Labeled individuals are constantly being rejected from society and this exclusion, even if in the slightest of ways, when taken as a whole, poses affronts to one’s identity that can drastically alter one’s self-concept.<sup>489</sup> Therefore, stigmatized individuals in society may begin to both anticipate and perceive negative societal reactions, which in turn may lead to a withdrawal from society, causing in essence a modifying of themselves to prevent any possible and further harm.<sup>490</sup> Additionally, Sheehan, Nieweglowski, and Corrigan explain that self-stigma can lead to the ‘why try effect’ where “one’s confidence is undermined due to the deterioration of self-efficacy (e.g., why should I try to do anything in society, for someone like me who has a criminal record is unworthy), ultimately leading to diminished efforts in pursuing and accomplishing life goals such as getting a job and developing meaningful relationships”.<sup>491</sup> Correspondingly, self-stigma equates to what Steven Maier and

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<sup>487</sup> Sheehan, Nieweglowski, & Corrigan, *supra* note 284, at 55.

<sup>488</sup> Bruce Link *et al.*, “A Modified Labeling Theory Approach to Mental Disorders: An Empirical Assessment”, in *American Sociological Review*. Vol. 54, No. 3, (June, 1989), at 400.

<sup>489</sup> *Ibid.*

<sup>490</sup> *Ibid.*

<sup>491</sup> Sheehan, Nieweglowski, & Corrigan, *supra* note 284, at 51

Martin Seligman explain as learned helplessness where individuals become conditioned to feeling as if they have no control of their lives and that there is no chance for a changed future, and as such, they resign themselves to do nothing but accept their situation.<sup>492</sup>

### **2.2.3- Agency Re-appropriation (a.k.a. management of a spoiled identity)**

To Goffman, as supported by Rachael Smith,<sup>493</sup> stigma is fostered within a relationship between the ‘stigmatized’ (those who bear the stigma), the ‘normals’ (those who do not bear the stigma), and the ‘wise’ (those among the normals who are accepted by the stigmatized as wise to their condition).<sup>494</sup> Goffman, also explains that no matter “whether we interact with strangers or intimates, we will still find that the fingertips of society have reached bluntly into the contact, [...] putting us in our place”.<sup>495</sup> Gerhard Falk too, having also studied resistance to the stigmatizing labels of society, believed (as Durkheim) that “we and all societies will always stigmatize some condition and some behavior because doing so provides for group solidarity by delineating 'outsiders' from 'insiders'”.<sup>496</sup> However, those individuals in society whose label has marked them as less worthy have found ways to re-appropriate their agency or, as the title of Goffman’s preliminary foray into stigma explains, to manage information about their spoiled identity.<sup>497</sup>

To Goffman, this re-appropriation or social editing is a precarious process of information control that affords the stigmatized the ability to pass as normal, despite knowing they are not.<sup>498</sup> Those stigmatized must choose “to display or not to display; to tell or not to tell; to let on or not

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<sup>492</sup> Steven F. Maier & Martin E.P. Seligman, "Learned Helplessness at Fifty: Insights from Neuroscience", in *Psychological Review*, Vol. 123, No. 4 (2016), at 349-351.

<sup>493</sup> Rachael Smith, “Segmenting an Audience into the Own, the Wise, and Normals: A Latent Class Analysis of Stigma-Related Categories”, in *Communication Research Reports* Vol. 29, No. 4, (2012) at 257.

<sup>494</sup> Goffman 1963, *supra* note 10, at 6-28

<sup>495</sup> *Ibid*, at 53.

<sup>496</sup> Gerhard Falk, *Stigma: How We Treat Outsiders* (Amherst, New York: Prometheus Books, 2001), at 13.

<sup>497</sup> Goffman 1963, *supra* note 10, at 12.

<sup>498</sup> *Ibid*, at 41, 127, 130, & 131.

to let on; to lie or not to lie; and in each case, to whom, how, when, and where”.<sup>499</sup> Nancy Herman agrees, suggesting that stigmatized people are not passive, powerless individuals; they are strategists, expert managers, and negotiators who play active roles in shaping their own social outcomes through the various techniques of stigma management they employ.<sup>500</sup> As such, Goffman posits that the often-employed strategy of the stigmatized person is to manage their risks by dividing the world in two, between people they are willing to share their secret with and those they want to keep from knowing.<sup>501</sup> This is a form of compartmentalization that Thomas LeBel, in a similar manner to Goffman, characterizes as various strategies people with criminal records can try to obscure their invisible stripes in order to better control how they are perceived in society.<sup>502</sup>

LeBel first explains concealment as a reactive and defensive method to avoid stigma,<sup>503</sup> and so too does Goffman suggest that certain individuals are able to marshal respect, invariably hiding their shame through conscious effort,<sup>504</sup> as there are “great rewards in being considered normal”.<sup>505</sup> However, as LeBel explains, with “the proliferation of criminal registries and the increased use of background checks [...] it is becoming much harder today for former prisoners to keep their past hidden (i.e. remain merely discreditable and not discredited)”.<sup>506</sup>

Secondly, LeBel presents the protective and defensive ability to avoid or withdraw from one’s stigma by avoiding interactions with ‘normal’ others and by socializing with similarly

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<sup>499</sup> *Ibid*, at 42.

<sup>500</sup> Nancy J. Herman, “Return to Sender: Reintegrative stigma-management strategies of ex-psychiatric patients”, in *Journal of Contemporary Ethnography*, Vol. 22, No. 3 (1993), at 324.

<sup>501</sup> Goffman 1963, *supra* note 10, at 95.

<sup>502</sup> LeBel 2006, *supra* note 376, at 48.

<sup>503</sup> *Ibid*, at 49.

<sup>504</sup> Goffman 1963, *supra* note 10, at 9.

<sup>505</sup> *Ibid*, at 74.

<sup>506</sup> LeBel 2006, *supra* note 376, at 50.

stigmatized or ‘the wise’.<sup>507</sup> Such avoidance strategies involve, as Cheryl Kaiser and Carol Miller explain, “physical, social, and psychological withdrawal or disengagement from interactions that may involve stigma-based rejection”,<sup>508</sup> much as Goffman suggests the overwhelming need to avoid being reminded of one’s presumed failings.<sup>509</sup> However, this label avoidance, as explained by Sheehan, Nieweglowski and Corrigan, can leave society unaware of problems, as those stigmatized remove themselves from society’s gaze,<sup>510</sup> and as such, stigma becomes a personal barrier, limiting one from full inclusion in society.<sup>511</sup>

A third strategy discussed by LeBel concerns activism and advocacy that, according to him and citing Zachary Gussow and George Tracy, runs counter to Goffman’s theory as it “offers no possibility of any serious attempt by stigmatized individuals to destigmatize themselves”.<sup>512</sup> However, LeBel does suggest that this position was implied by Goffman when he stated

The problems associated with militancy are well known. When the ultimate political objective is to remove stigma from the differentness, the individual may find that his very efforts can politicize his own life, rendering it even more different from the normal life initially denied him—even though the next generation of his fellows may greatly profit from his efforts by being more accepted. Further, in drawing attention to the situation of his kind he is in some respects consolidating a public image of his differentness as a real thing and of his fellow-stigmatized as constituting a real group.<sup>513</sup>

Goffman does however, explain how someone’s stigma can be internalized in a beneficial way, as, where others see a problem, the stigmatized understand their discrediting attribute as a

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<sup>507</sup> *Ibid*, at 53.

<sup>508</sup> Cheryl R. Kaiser & Carol T. Miller, “Implications of Mental Models of Self and Others for the Targets of Stigmatization”, in Mark R Leary, ed., *Interpersonal Rejection* (London: Oxford University Press, 2006), at 263 [Kaiser & Miller].

<sup>509</sup> Goffman 1963, *supra* note 10, at 11.

<sup>510</sup> Sheehan, Nieweglowski, & Corrigan, *supra* note 284, at 52.

<sup>511</sup> Goffman 1963, *supra* note 10, at 13.

<sup>512</sup> Zachary Gussow, & George S. Tracy, “Status, ideology, and adaptation to stigmatized illness: A study of leprosy”, in *Human Organization*, Vol. 27, No. 4 (1968), at 317.

<sup>513</sup> Goffman 1963, *supra* note 10, at 114.

“blessing in disguise”.<sup>514</sup> By reclaiming their narrative as their own, Laura Stanley explains, stigmatized people have the ability “to reconstruct and reassert a ‘safe’ and coherent moral identity”.<sup>515</sup> Similarly, a fourth strategy enabling people marked by past interaction with the criminal justice system to cope in a stigmatizing society according to LeBel “involves the phenomenon of becoming a ‘professional ex-‘ or ‘wounded healer’”.<sup>516</sup> Referencing David Brown, LeBel explains that “professional ex-s are individuals who have exited their deviant careers by replacing them with occupations in professional counseling”,<sup>517</sup> and, citing William White and Shadd Maruna, offers that the former suggests “wounded healers carry a message of hope”<sup>518</sup> and the later explains “a moral tale to help guide others in the right direction”.<sup>519</sup> However, to LeBel, this coping strategy is different than that of the activist, for the ex-professional and the wounded healer are more conformist and simply want to provide people with a stigmatizing mark (e.g., criminal record) a sympathetic and familiar space,<sup>520</sup> one that Brown characterizes as a “new sense of place in the surrounding community [...] to form new self-concepts and self-esteem”.<sup>521</sup> Goffman agrees, as he suggests stigmatized individuals might turn to other stigmatized people (or sympathetic others) for support by either forming or joining self-help groups, to feel a sense of belonging,<sup>522</sup> for, “among his own, the stigmatized individual can use his disadvantage as a basis for organizing life”.<sup>523</sup>

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<sup>514</sup> *Ibid*, at 11.

<sup>515</sup> Laura D. Stanley, “Transforming AIDS: The moral management of stigmatized identity”, in *Anthropology and Medicine*, Vol. 6, No. 1, (1999), at 103.

<sup>516</sup> LeBel 2006, *supra* note 376, at 58.

<sup>517</sup> David J. Brown, “The professional ex-: An alternative for exiting the deviant career”, in *Sociological Quarterly*, Vol. 32, (1991) at 219 [Brown].

<sup>518</sup> William L. White, “The history of recovered people as wounded healers: II. The era of professionalization and specialization”, in *Alcoholism Treatment Quarterly*, Vol. 18, No. 2 (2000), at 11.

<sup>519</sup> Shadd Maruna, *Making good: How ex-convicts reform and reclaim their lives* (Washington D.C.: American Psychological Association Books, 2001).

<sup>520</sup> LeBel 2006, *supra* note 376, at 61.

<sup>521</sup> Brown, *supra* note 499, at 225.

<sup>522</sup> Goffman 1963, *supra* note 10, at 22.

<sup>523</sup> *Ibid*, at 21.

The last coping tactic discussed by LeBel is the maintenance or enhancement of a one's criminal attitudes and lifestyle.<sup>524</sup> Goffman similarly puts forth this strategy, as he (much like labelling theory and criminalization) posits that stigmatized individuals might take up the mantle of their stigmatizing attribute for social gain and notoriety.<sup>525</sup> Along these lines, LeBel, referencing Elijah Anderson's inner city ethnography, suggests that young male African-Americans "pride themselves on living the 'thug life,' actively defying not simply the wider social conventions but the law itself".<sup>526</sup> As John Irwin proposes, "the deviant identity and concomitant world view insulates them from the contempt, disgust, condescension, or patronization of others".<sup>527</sup> A concept similarly offered by Goffman is that

it seems possible for an individual to fail to live up to what we effectively demand of him, and yet be relatively untouched by this failure; insulated by his alienation, protected by identity beliefs of his own, he feels that he is a full-fledged normal human being, and that we are the ones who are not quite human. He bears a stigma but does not seem to be impressed or repentant about doing so.<sup>528</sup>

Yet, despite the possible comradery offered, living in a society dominated by a culture of surveillance and control does not promise, as Don Andrews and James Bonta suggest, a future where a criminal record will be the most pressing of concerns when one is surrounded by antisocial associates.<sup>529</sup>

In concluding on agency re-appropriation, Goffman suggests one's stigma "divides up the world of people and places",<sup>530</sup> so that those who are stigmatized function within a smaller

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<sup>524</sup> LeBel 2006, *supra* note 376, at 62.

<sup>525</sup> Goffman 1963, *supra* note 10, at 10-11.

<sup>526</sup> Elijah Anderson, *Code of the street: Decency, violence, and the moral life of the inner city* (New York: W. W. Norton & Company, 1999), at 36.

<sup>527</sup> John Irwin, *The Felon*. (Englewood Cliffs, NJ: Prentice Hall, 1970), at 138.

<sup>528</sup> Goffman 1963, *supra* note 10, at 6.

<sup>529</sup> Don Andrews, & James Bonta, *The Psychology of Criminal Conduct: fifth edition* (New York: Routledge, 2010), at 59.

<sup>530</sup> Goffman 1963, *supra* note 10, at 91.

society, where their personal techniques of information control offer meaning to their lives.<sup>531</sup> LeBel (and others) explain, criminal records shrink one's social reality, as disclosure of past interaction with the criminal justice system may not just enable society to negatively segregate others but this readily accessible dissemination of one's criminalization will make those who are marked themselves internalize the beliefs of the stigma they have been marked with by others.<sup>532</sup>

In closing on the theory of stigma, be it a macro or micro process, the social creation of stigma is understood by the various theorists discussed as a concept by which the social identity of an individual or group is dependent upon the social interaction of those around them in forming who they are in relation to how others perceive them. With time, stigma has become a multifaceted concept. However, for the purpose of this paper, the self-stigmatizing process of being aware, agreeing with, and applying the negative stereotypes around criminalization that are enabled through the government's dependence on its machinations of surveillance and control to facilitate a safe society (e.g.; criminal records and criminal record checks) is understood to foster an internalized negative self-concept. As such, indefinitely marking someone as less worthy the way that criminal records (for certain situations) do seems counterproductive to the rehabilitative ideal of the Canadian criminal justice system, particularly when the stigmatizing effect further marginalizes the already marginalized. At one time, the management of one's spoilt identity (despite any neo-liberal undertones) offered a reprieve from society's gaze. However, today with the structural-stigma attached to criminal records being an automatic and enduring feature of the Canadian criminal justice system, the invisible stripes of prior interaction with the justice system have become a fixed reminder that no matter how trivial the crime, one can never hide the scars of a past conviction.

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<sup>531</sup> *Ibid.*

<sup>532</sup> LeBel 2006, *supra* note 376, at 52.

### 2.3- Emotion

In 380 BCE, Plato, in *The Republic*, philosophizes about the three components of the human soul/mind, concluding that reason is the master of both desire and emotion.<sup>533</sup> From such thinking, Greek Epicureanism (300 BCE) and Roman Stoicism (300 CE) schools understood emotions as being a result of the passions of the body that could and should be controlled by the practical wisdom of the mind in order to live a virtuous life.<sup>534</sup> This concept that Keith Oatley suggests has found its way into the precepts of the Abrahamic religions in the idea that there is a need to control emotions to avoid sinful behaviour.<sup>535</sup> However, science, with Charles Darwin's book *The Origin of the Species* (1859) and his subsequent manuscript *The Expression of the Emotions in Man and Animals* (1872), broke from the past and offered a functional perspective to emotions.<sup>536</sup> Based on his research, Darwin suggested that the existence of similarities between animals and humans (e.g., a snarling dog has a commonality to an angry person's face) demonstrates that emotional expression must have evolved through natural selection in the same way that other characteristics evolved.<sup>537</sup> This concept led him to identify distinct categories of emotion (e.g., anger, sadness, fear, surprise, happiness, and disgust) due to specific facial and other expressions being associated with these specific emotive states, and to suggest emotions function in improving the possibility of survival.<sup>538</sup> This interesting and informative venture of Darwin's into the emotional juxtaposition of animals besides the human kind, as explained by

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<sup>533</sup> Plato, *The Republic*, in Benjamin Jowett ed., (Project Gutenberg EBook: 2016), online: <[https://www.gutenberg.org/files/1497/1497-h/1497-h.htm#link2H\\_4\\_0007](https://www.gutenberg.org/files/1497/1497-h/1497-h.htm#link2H_4_0007)>, at IV, 3.

<sup>534</sup> Massimo Pigliucci, "Stoicism", in *Internet Encyclopedia of Philosophy*, online: <<http://www.iep.utm.edu/stoicism/>>.

<sup>535</sup> Keith Oatley, *Emotions: A brief history*, (Oxford: Blackwell Publishing, 2004), at 50 [Oatley].

<sup>536</sup> *Ibid*, at 24.

<sup>537</sup> Charles Darwin, *The Expression of the Emotions in Man and Animals* (1872), (Project Gutenberg EBook: 2012) online: <<https://www.gutenberg.org/files/1227/1227-h/1227-h.htm>>, at I & V.

<sup>538</sup> *Ibid*, at IV.

Paul Ekman, not only opened the topic of emotions up to the field of psychology to further explore their relevance to the human condition but to modernity as well.<sup>539</sup>

Be it the James-Lange,<sup>540</sup> the Cannon-Bard,<sup>541</sup> the Schacter-Singer,<sup>542</sup> or the cognitive arousal theory of emotion posited by Magda Arnold,<sup>543</sup> over time Darwin's proposals were expanded upon through philosophical and psychological research. However, despite the cognitive applicability of emotion, as Gretchen Reevy *et al.* explain, "researchers representing other approaches made significant contributions"<sup>544</sup> as well. One such approach, as explained by Gregory Johnson, concerns the idea that emotions, besides being a natural biological phenomenon, are social constructions in that they are the products of societies and cultures and acquired or learned by individuals through experience.<sup>545</sup> In 1970, Paul Ekman, as Reevy *et al.* propose in revisiting Darwin's thinking, discuss immediate survival functions of emotion but are moreover, like Darwin, highlighting a further profound social function of emotions.<sup>546</sup> Reevy *et al.* suggests that emotional expressions are a sign to others about the way someone is feeling, and are portrayed in what Ekman found in a pan-cultural exploration of people's facial expressions, and like Darwin described, as the six universally recognized emotions of happiness, sadness, anger, fear, surprise, and disgust.<sup>547</sup> However, Ekman adds contempt, pleasure, and possibly

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<sup>539</sup> Paul Ekman, "Giving Darwin His Due", in *The Observer*, Vol. 22, No. 8 (2009), at 15. [15-17].

<sup>540</sup> Carl G. Lange, & William James, *The Emotions*, (Baltimore, Williams & Wilkins Company, 1922), at 13.

<sup>541</sup> Walter B. Cannon, "The James-Lange Theory of Emotions: A critical examination and alternative theory", in *American Journal of Psychology*, Vol. 39, No. 1/4 (1927), at 120.

<sup>542</sup> Stanley Schachter, & Jerome E. Singer, "Cognitive, Social, and Physiological Determinants of Emotional State", in *Psychological Review*, Vol. 69, No. 5 (September, 1962), at 380-381.

<sup>543</sup> Magda B. Arnold, *Emotion and Personality: Vol. I. Psychological aspects; Vol. II. Neurological and physiological aspects*, (New York: Columbia University Press, 1960), at 182.

<sup>544</sup> Gretchen M. Reevy, *et al.*, *Encyclopedia of Emotion* (Oxford: Greenwood, 2010), at 7 [Reevy *et al.*].

<sup>545</sup> Gregory Johnson, "Theories of Emotion" J. Fieser and B. Dowden, eds., in *The Internet Encyclopedia of Philosophy*, (2009), online: <[www.iep.utm.edu/emotion/](http://www.iep.utm.edu/emotion/)>.

<sup>546</sup> Reevy *et al.*, *supra* note 544, at 7.

<sup>547</sup> Paul Ekman, "Universal Facial Expressions of Emotion", in *California Mental Health Research Digest*, Vol. 8 No. 7, (1970), at 156.

interest to the list with the help of Wallace Friesen in the 1980's.<sup>548</sup> This expression of emotion in turn cultivates bonds (e.g., a sad expression could encourage an observer to provide nurturing behaviors toward the sad person) or encourages the creation of power relationships between individuals (e.g., an angry expression could communicate dominance).<sup>549</sup> However, despite these finite categories of emotion, Chris Shilling offers that a precise definition of emotion is both an ethereal and elusive thing.<sup>550</sup> Correspondingly, Walby, Spencer, and Hunt advance "that definitions of emotions in sociology can sometimes lack conceptual clarity".<sup>551</sup> Peggy Thoits concurs, as she suggests that there are probably as many definitions of emotion as there are authors who have written about the subject.<sup>552</sup> Nevertheless, like Ekman, Shilling, Walby, Spencer, and Hunt, she understands emotions as being a continuum within social interaction,<sup>553</sup> where as human beings, despite being motivated by rational-economic concerns, it is their emotional attachments to others and affective commitments (e.g. desires, attitudes, values, moral beliefs) that influence a significant portion of their behavior.<sup>554</sup> Walby, Spencer, and Hunt are familiar with this understanding, positing that emotions are "salient to understanding social life"<sup>555</sup> as they matter to "action, culture and the self".<sup>556</sup> To them, emotion is a multi-relational interaction between the self and society.<sup>557</sup>

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<sup>548</sup> Paul Ekman & Wallace V. Friesen, "A New Pan-Cultural Facial Expression of Emotion", in *Motivation and Emotion*, Vol. 10, No. 2, (1986), at 159-160 [Ekman & Friesen].

<sup>549</sup> *Ibid.*

<sup>550</sup> Chris Shilling, "The Two Traditions in the Sociology of Emotions", in *The Sociological Review*, Vol. 50 No. 52 (2002), at 12 [Shilling].

<sup>551</sup> Walby, Spencer, & Hunt, *supra* note 311, at 4.

<sup>552</sup> Peggy Thoits, "The Sociology of Emotions", in *Annual Review of Sociology*, Vol. 15 (1989), at 318 [Thoits].

<sup>553</sup> *Ibid.*

<sup>554</sup> *Ibid.*, at 317.

<sup>555</sup> Walby, Spencer, & Hunt, *supra* note 311, at 4.

<sup>556</sup> *Ibid.*

<sup>557</sup> *Ibid.*, at 5.

For the purpose of this research, a working definition of emotions will be helpful. Notwithstanding the evolutionary or neuro-biological definition/function of emotions as being the predominant factor in decision-making that contributes to individual and species survival,<sup>558</sup> Eduardo Bericat, after reviewing the last four decades of the sociology of emotions, has identified a common theme based on the thinking of Norman Denzin,<sup>559</sup> Theodore Kemper,<sup>560</sup> Edward Lawler,<sup>561</sup> Leslie Brody,<sup>562</sup> and Klaus Scherer,<sup>563</sup> among others within the field.<sup>564</sup> To him,

emotions constitute the bodily manifestation of the importance that an event in the natural or social world has for a subject, [as] emotion is a bodily consciousness that signals and indicates this importance, regulating in this way the relationships that a specific subject has with the world, [which] in its most basic expression involves three elements: (a) the assessment/appraisal; (b) of an event in the world; and (c) made by an individual.<sup>565</sup>

Despite Bericat's reductionist simplicity, to him "human emotion hides abundant complexities, problems and paradoxes".<sup>566</sup> This concept, as suggested by Lisa Barrett, is found in the mistaken belief that emotions are "discrete events that can be recognized with some degree of accuracy".<sup>567</sup> Therefore, she like Reevy *et al.*, Bericat and Thoits, posits that there are different

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<sup>558</sup> António Damásio, *Descartes' Error: Emotion, Reason and the Human Brain*, (New York: HarperCollins Publishing, 1994) at 38.

<sup>559</sup> Norman K. Denzin [1984], *On Understanding Emotion*, (London: Transaction Publishers, 2009) at 66 [Denzin].

<sup>560</sup> Theodore D. Kemper, "How many emotions are there? Wedding the social and autonomic components", in *American Journal of Sociology*, Vol. 93, No. 2, (1987), at 267.

<sup>561</sup> Edward J. Lawler, "Bringing emotions into social exchange theory", in *Annual Review of Sociology*, Vol. 25, (1999), at 219.

<sup>562</sup> Brody, *supra* note 368, at 15.

<sup>563</sup> Klaus R. Scherer, "What are emotions? And how can they be measured?", in *Social Science Information*, Vol. 44, No. 4 (2005), at 697.

<sup>564</sup> Eduardo Bericat, "The Sociology of Emotions: Four decades in progress", in *Current Sociology*, Vol 64, No. 3, (2016), at 491[Bericat].

<sup>565</sup> *Ibid*, at 493.

<sup>566</sup> *Ibid*.

<sup>567</sup> Lisa Feldman Barrett, "Solving the Emotion Paradox: Categorization and the Experience of Emotion", in *Personality and Social Psychology Review*, Vol. 10, No. 1, (2006), at 20 [Barrett].

classes of affective states involved in emotion that open the concept to the possibility of being understood more fully if they are understood properly.<sup>568</sup>

According to Thoits, feelings, affects, sentiments, and moods, despite being somewhat peripheral to emotions, are still each relevant in understanding emotion.<sup>569</sup> However, Walby, Spencer, and Hunt counsel “to avoid reducing emotion, affect, and feeling to one another, and to keep [...] focus on the interface between the self and structural shaping”,<sup>570</sup> for to them, emotions are a relational product of power.<sup>571</sup> Nevertheless, for Thoits, feelings concern both physical states like hunger and pain but also internalized states of emotion like happiness and sadness.<sup>572</sup> Reevy *et al.* would agree, as is suggested that despite emotions being relatively time limited phenomenon they are made up of more complex processes like physiological responses, thoughts, expressions, feeling, and various other elements.<sup>573</sup> Nonetheless, feelings are understood as a form of awareness tied to the sensations of the body that have an affective or emotional quality.<sup>574</sup> Similarly, Thoits tells us that affects refer to positive and negative evaluations concerning everything an individual encounters in their world like objects, behaviours and ideas.<sup>575</sup> Reevy *et al.* again, agree; however, she describes affects as a reflexive response suggesting that these appraisals of judgement are automatic.<sup>576</sup> They also suggest that despite the significance of feelings and affect to emotion both are less complex than emotion.<sup>577</sup>

Thoits would concur with this as she proposes that despite both feelings and emotions being

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<sup>568</sup> *Ibid*; Reevy *et al.*, *supra* note 543, at 1; Bericat, *supra* note, 563 at 492; & Thoits, *supra* note 551, at 318.

<sup>569</sup> Thoits, *supra* note 551, at 318.

<sup>570</sup> Walby, Spencer, & Hunt, *supra* note 311, at 5.

<sup>571</sup> *Ibid.*

<sup>572</sup> *Ibid.*

<sup>573</sup> Reevy *et al.*, *supra* note 544, at 1.

<sup>574</sup> *Ibid.*, at 267.

<sup>575</sup> Thoits, *supra* note 552, at 318.

<sup>576</sup> Reevy *et al.*, *supra* note 544, at 38.

<sup>577</sup> *Ibid* at 38 & 267.

somewhat generalized concepts they are pertinent to this paper as “emotions can be viewed as culturally delineated types of feelings or affects”.<sup>578</sup> In regards to moods, Thoits explains that when compared to emotions moods are more chronic, less intense, and less tied to an eliciting situation.<sup>579</sup> Reevy *et al.*, likewise explain moods as free floating and long lasting type of emotional experience.<sup>580</sup> When discussing sentiments, Thoits borrows Steven Gordon’s definition where he states they are “a combination of bodily sensations, gestures, and cultural meanings that we learn in enduring social relationships”.<sup>581</sup> Reevy *et al.* are silent about sentiments; however, their and Thoits’ thinking about moods, as well as Thoits’ and Gordon’s on sentiments, place these concepts within the realm of what Reevy explains as “the subjective experience of emotion”,<sup>582</sup> with both moods and sentiments being affect elicitors facilitated by social antecedents and their social acquisition and shaping.<sup>583</sup>

Feelings, affect, moods, and sentiment; therefore, are important for they are all emotional adjacent and seem to have a social foundation. Bericat likewise advances that the “emotions a subject feels should never be considered as simple mechanical or physiological responses to variations produced in the environment”.<sup>584</sup> He characterizes “emotions [as] part of an active process [that] can undergo multiple and enigmatic transmutations that are both voluntary and involuntary, or conscious and unconscious”<sup>585</sup> as is evidenced through shame becoming anger, happiness turning to tears, and pain into pleasure.<sup>586</sup> As such, Bericat describes the emotional

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<sup>578</sup> Thoits, *supra* note 552, at 318.

<sup>579</sup> *Ibid.*

<sup>580</sup> Reevy *et al.*, *supra* note 544, at 384.

<sup>581</sup> Steven L. Gordon, “The Sociology of Sentiments and Emotion”, Morris Rosenberg & Ralph H. Turner eds., in *Social Psychology: Sociological Perspectives*, (New York: Basic Books, 1981) at 563.

<sup>582</sup> Reevy *et al.*, *supra* note 543, at 546.

<sup>583</sup> Thoits, *supra* note 552, at 319.

<sup>584</sup> Bericat, *supra* note 564, at 493.

<sup>585</sup> *Ibid.*, at 494.

<sup>586</sup> *Ibid.*

lives of human beings as “a dynamic process of multiple sequences and emotional structures”<sup>587</sup> for to him a single emotion like fear, by differing in content and intensity, can “constitute a broad emotional family composed of feelings such as worry, anxiety, panic, terror or horror”.<sup>588</sup> This understanding is similarly described by Alan Cowen and Dacher Keltner, who very recently suggest that there are twenty-seven distinct emotions (admiration, adoration, aesthetic appreciation, amusement, anxiety, awe, awkwardness, boredom, calmness, confusion, craving, disgust, empathetic pain, entrancement, envy, excitement, fear, horror, interest, joy, nostalgia, romance, sadness, satisfaction, sexual desire, sympathy, and triumph) connected by an ambiguous spectrum of interrelated affect.<sup>589</sup> Elizabeth Williamson would agree; to her, emotions are not experienced in isolation individually or temporally,<sup>590</sup> for as Bericat explains, “our emotional lives are dynamic processes of multiple sequences and emotional structures”.<sup>591</sup> These processes Ian Burkitt suggests, pattern our relationship as individuals with those we share the social world with.<sup>592</sup>

Theories of emotion run from micro- to macro-social in orientation with overlap in between.<sup>593</sup> However, regardless of the various approaches that explain the way emotions work, the salient point is one that Ronald de Sousa makes when he proposes that “[n]o aspect of our mental life is more important to the quality and meaning of our existence than emotions”.<sup>594</sup>

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<sup>587</sup> *Ibid*, at 495.

<sup>588</sup> *Ibid*, at 502.

<sup>589</sup> Alan S. Cowen, & Dacher Keltner, “Self-report captures 27 distinct categories of emotion bridged by continuous gradients” in *Proceedings of the National Academy of Sciences*, Vol. 114, No. 38 (September, 2017), at E7900 & E7905 [Cowen & Keltner].

<sup>590</sup> Elizabeth Williamson, “The Magic of Multiple Emotions: An examination of shifts in emotional intensity during the reclaiming movement’s recruiting/training events and event reattendance”, in *Sociological Forum* Vol 26, No. 1 (2011), at 45.

<sup>591</sup> Bericat, *supra* note 564, at 495.

<sup>592</sup> Ian Burkitt, *Emotions and Social Relations* (London: Sage Publications Ltd., 2014), at 150.

<sup>593</sup> Thoits, *supra* note 552, at 319-337; Shillings, *supra* note 550, at 11; & Bericat, *supra* note 564, at 497.

<sup>594</sup> Ronald de Sousa, “Emotion”, in *Stanford Encyclopedia of Philosophy*, online: <<https://plato.stanford.edu/entries/emotion/>>.

Shilling similarly agrees, as he suggests “the subject of emotions is now recognized as crucial to a comprehensive understanding of key sociological issues”.<sup>595</sup> Bandes likewise explains that emotions are not just private and internal phenomenon but complex processes that unfold in real-life contexts.<sup>596</sup> She, and a growing number of scholars like Grossi, understand that emotions are more than mere physical sensations for they embody expressions of our knowledge, ethics, and value systems of which the criminal justice system is a key social institution.<sup>597</sup> Consequently, Grossi describes an interdisciplinary approach to “the important role that emotions play in the thinking and practices of law [...as] emotions are essential to their operation and effectiveness”.<sup>598</sup> As such, within this multidimensional engagement of law and emotion scholarship, Terry Maroney has helped refine a taxonomy of tactics that are relevant to the burgeoning field.<sup>599</sup> Her categorisation “is primarily a descriptive one, seeking to isolate and surface the scholarship’s hidden infrastructure”.<sup>600</sup> However, to her it is also “an exercise in articulating the movement’s goals and theoretical underpinnings”,<sup>601</sup> one of which is an emotion centered approach that “analyzes how a particular emotion is, could be, or should be reflected in law”.<sup>602</sup> Therefore, by delving deeper into a particular emotion and the affect these emotions are understood to carry, there is the possibility of not just learning more, but also adding to the emotion-centered literature already accumulated.<sup>603</sup> For these reasons, in regards to the self-

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<sup>595</sup> Shilling, *supra* note 550, at 11.

<sup>596</sup> Susan Bandes, “What Roles Do Emotions Play in Law?”, in *Emotion Researcher* (October, 2016), online: <<http://emotionresearcher.com/what-roles-do-emotions-play-in-the-law/>>.

<sup>597</sup> Grossi, *supra* note 300, at 55.

<sup>598</sup> *Ibid* at 57.

<sup>599</sup> Maroney, *supra* note 303, at 119-120.

<sup>600</sup> *Ibid*, at 120.

<sup>601</sup> *Ibid*.

<sup>602</sup> *Ibid*, at 125.

<sup>603</sup> *Ibid*.

stigmatizing process associated with criminal records, any emotion put forth by my research participants will be explored in regards to the experienced world in which they live in.

The salient message from the evolution of scholarly attention focused on the understanding of emotion is that they are the precursor to human action. However, this thesis does not want to become lost in the intricacies of what Patricia Clough and Jean Halley have coined “the affective turn”.<sup>604</sup> Instead, this thesis is concerned that from within a short cycle of manifestation, the multifaceted affect of emotion diffuses throughout an individual as feelings, moods and sentiments that all play a role in shaping how that individual acts within a larger relational social web of interaction, and how this personal understanding of how they feel applies to the field of legal studies.

#### **2.4- Self-Stigma and Emotion**

Symbolic interactionism (and constructivism) suggests that humans, as phenomenon of experience, assign meaning to make sense of the world in which they live. In a likeminded way, Ankur Joshi, *et al.*, propose that by using a Likert scale one is able “to transform an individual’s subjectivity into an objective reality [...] by depicting the complexity of human thoughts, feelings, and outlooks”.<sup>605</sup> This method, used by Jennifer Boyd-Ritsher, Poorni Otilingam, and Monica Grajales,<sup>606</sup> Michael King *et al.*,<sup>607</sup> Terri Winnick and Mark Bodkin,<sup>608</sup> Thomas

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<sup>604</sup> Patricia Ticento Clough, “Introduction”, in Patricia Ticento Clough, & Jean Halley, eds., *The Affective Turn: Theorizing the Social* (London: Duke University Press, 2007), at 2.

<sup>605</sup> Ankur Joshi, *et al.*, “Likert Scale: Explored and Explained”, in *British Journal of Applied Science & Technology*, Vol. 7, No. 4, (2015), at 397.

<sup>606</sup> Jennifer Boyd-Ritsher, Poorni G. Otilingam, and Monica Grajales, “Internalized Stigma of Mental Illness: Psychometric Properties of a New Measure”, in *Psychiatry Research*, Vol. 121 (2003), at 20 [Boyd-Ritsher, Otilingam, & Grajales].

<sup>607</sup> Michael King *et al.*, “The Stigma Scale: Development of a standardised measure of the stigma of mental illness”, in *British Journal of Psychiatry*, Vol. 190 (2007), at 253 [King *et al.*].

<sup>608</sup> Terri A. Winnick & Mark Bodkin, “Anticipated Stigma and Stigma Management Among Those to be Labeled ‘Ex-con’”, in *Deviant Behavior*, Vol. 29, at 308 [Winnick & Bodkin].

LeBel,<sup>609</sup> along with, Chui and Chen,<sup>610</sup> puts forward an understanding of self-stigma that is experienced through feelings of alienation, stereotype endorsement, perceived discrimination, and social withdrawal,<sup>611</sup> as well as fear, avoidance, withdrawal, and secrecy.<sup>612</sup>

In closing on this paper's theory section, the inclusion of symbolic interactionism to further an emotive understanding of the self-stigmatizing process of criminal records is a relevant avenue of knowledge acquisition, for as Mead explains, the individual in society is a phenomenon of human experience and interaction. Blumer put his own spin on this concept, suggesting that interactionist's primary concerns are the relationships among individuals and how meanings is created through such social relations, while the structures and institutions of society, at least to him, are of secondary importance. However, for my purposes these elements will be weighed the same, although perhaps not given the same significance as my main concern is how people feel, albeit how they feel as a result of the effects of a structural process of one of society's main social institutions. Therefore, since it has been suggested that interactionist theory can guide the study of any and everything social, using it to further explore the concept of self-stigma will be beneficial. Goffman, Sheehan, Nieweglowski, and Corrigan suggest this is an experience of human interaction, as stigmatizing labels permit people to play the roles society seems to have predetermined they will fulfil. Similarly, emotions are also socially emergent phenomenon, as sociological interpretations of emotions situate feelings within a framework of experiential interaction. As such, regardless of micro- or macro-social approaches to how people are constituted within an interrelation world that assigns meaning to everything they experience,

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<sup>609</sup> Thomas LeBel, "If One Doesn't Get You Another One Will": Formerly Incarcerated Persons' Perceptions of Discrimination", in *The Prison Journal*, Vol. 92 (2012), at 72-73 [LeBel: 2012].

<sup>610</sup> Chui & Cheng, *supra* note 377, at 671.

<sup>611</sup> Boyd-Ritsher, Otilingam, & Grajales, *supra* note 606, & LeBel: 2012, *supra* note 609.

<sup>612</sup> King *et al.*, *supra* note 607, at 253; & Winnick & Bodkin, *supra* note 608.

symbolic interactionism's applicability to studying the networks of understanding attached to stigma and emotion will, with the help of various borrowed theoretical scales, give a more fulsome picture of who my research participants are and how these networks inculcate the various social forces that play out around us as we operate in the world we live.

### Chapter 3- Methodology

The first Prime Minister of India, Jawaharai Nehru suggested that “a theory must be tempered by reality”.<sup>613</sup> This is wise instruction that applies to my research, as Richard Kallet similarly proposes that the methods section provides all the information by which my study's validity and reliability is judged.<sup>614</sup> To him, this requires a clear and precise description of all choices made, as well as the rationale for why they were made, for in doing so, the method in which my research question was answered is apparent, as are my results.<sup>615</sup> Jean J. Schensul suggests the methodology section is the “roadmap- that researchers employ to render their work open to analysis and critique”,<sup>616</sup> although, as Jennifer Mason explains, “while identifying a general interest or topic [...] is fairly straightforward, it is much more of a challenge to design an effective project with a clear, relevant and intellectually worthwhile focus to explore”.<sup>617</sup> Nevertheless, as the ancient Chinese philosopher, Lao Tzu, advised the longest of journeys begins with the smallest of steps,<sup>618</sup> an adage suggesting that things are possible when one works towards them in incremental stages and so too does this section. As, outlined within, as Schensul proposes, will be a step-by-step expression of this thesis’s research process concerning its guiding paradigms, its research question(s), its method of data collection, other pertinent aspects of its design, and the analysis of the data collected.<sup>619</sup>

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<sup>613</sup> Jawaharlal Nehru, *Selected Speeches: Volume-2: 1949-1953* (India, Publications Division Ministry of Information & Broadcasting, 1954), at 3330.

<sup>614</sup> Richard H. Kallet, “How to Write the Methods Section of a Research Paper”, in *Respiratory Care*, Vol. 49, No. 10 (October, 2004), at 1229.

<sup>615</sup> *Ibid.*

<sup>616</sup> Jean J. Schensul, “Methodology”, in Lisa M. Given ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2* (London: Sage Publications Inc., 2008), at 516 [Schensul: Methodology].

<sup>617</sup> Jennifer Mason, *Qualitative Researching*, (London: Sage, 2002), at 13 [Mason].

<sup>618</sup> *Tao Te Ching*, at Chapter 64.

<sup>619</sup> Schensul: Methodology, *supra* note 616, at 516.

### 3.1- Guiding Paradigms

Sarah Tracy suggests that paradigms are a useful tool to help a researcher understand reality.<sup>620</sup> Therefore, the first step of my methodology is to understand both the social reality or ontological perspective of my thesis,<sup>621</sup> as well as, my epistemological choices, for as Mason explains, they provide “the principles and rules by which you decide whether and how social phenomena can be known, and how knowledge can be demonstrated”.<sup>622</sup>

Mason warns that a combined orientation may be a lazy tactic.<sup>623</sup> However, I hope that making use of two paradigms, instead of competing with each other, will not just be complementary but, as Norman Denzin and Yvonna Lincoln explain, that such a ‘bricolage’ will also be a more informed and relevant method to gain knowledge and better perceive the reality of what I want to study.<sup>624</sup> As a result, choosing both constructivist and critical lenses to orient my research, as well as position the acquisition of my knowledge seems appropriate. As explained by Lynda Stone, the philosophical contribution of at least the last century has been to generally acknowledge that there is no one and only system that leads to understanding.<sup>625</sup> Therefore, building a better understanding of socially constructed concepts like stigma and emotion, to me, should be lent further authority to the exploration of the phenomena through the lens of a constructivist paradigm.<sup>626</sup> As well, since stigma and emotions are also enmeshed within dynamics of power,<sup>627</sup> a more fulsome understanding of them is accessible by looking through

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<sup>620</sup> Sarah J. Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*, (Oxford: Willey-Blackwell, 2013), at 38 [Tracy].

<sup>621</sup> Mason, *supra* note 617, at 14.

<sup>622</sup> *Ibid*, at 16.

<sup>623</sup> *Ibid*.

<sup>624</sup> Norman Denzin and Yvonna Lincoln, *The Sage Handbook of Qualitative Research*, (London: Sage Publications, 2005) at 4 [Denzin & Lincoln].

<sup>625</sup> Lynda Stone, “Epistemology”, in Lisa M. Givens ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2*, (London: Sage Publications Inc., 2008), at 265.

<sup>626</sup> Tracy, *supra* note 620, at 40-41.

<sup>627</sup> Goffman, *supra* note, 10 at 140.

the lens of a critical paradigm.<sup>628</sup> While constructivism may be more concerned with self-reflexivity or, as Bogdan Popoveniuc suggests, the interactive way knowledge is produced through how individuals experience the world they live in,<sup>629</sup> a critical orientation focuses more on transformation or, as Max Horkheimer suggests, the ability to liberate human beings from the circumstances that enslave them.<sup>630</sup> Additionally, both lenses also lend themselves to better understanding the reality found in the need for and use of criminal records. Consequently, despite a socially constructed reality producing subjective and value laden knowledge, and a critical reality being shaped through historical power imbalances, by respecting any incommensurability between the two paradigms, knowledge garnered from each should provide more insight than one alone.<sup>631</sup>

It is from within these various paradigm choices that my research journey becomes a lesson in making sense of how the people I interviewed live and narrate the context of their own experiential lives.<sup>632</sup> The methodological implications of a constructivist paradigm concern what Max Weber called *verstehen*, or the “interpretive understanding of the subjective motivations individuals attach to their actions”.<sup>633</sup> Alternatively, from within a critical paradigm there is a greater emphasis on understanding the ideology that guides the beliefs and values that underpin the power that reproduces these norms in society.<sup>634</sup> Equally, both ways of knowing together afford those studied a venue to voice their stories,<sup>635</sup> for as author Brian Morton advises, “the

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<sup>628</sup> Tracy, *supra* note 620, at 42.

<sup>629</sup> Bogdan Popoveniuc, “Self-Reflexivity, The Ultimate End of Knowledge”, in *Procedia- Social and Behavioural Sciences*, Vol. 163, (2014), at 205-206.

<sup>630</sup> Max Horkheimer, *Critical Theories: Selected Essays*, (New York: Continuum Publishing, 2002) at 213.

<sup>631</sup> Tracy, *supra* note 620, at 47.

<sup>632</sup> Jean J. Schensul, “Methods”, in Lisa M. Given, ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2*, (London: Sage Publications Inc., 2008), at 522 [Schensul: Methods].

<sup>633</sup> Tracy, *supra* note 620, at 41.

<sup>634</sup> *Ibid* at, 42-43.

<sup>635</sup> *Ibid*.

human world is bound together not by protons and electrons, but by stories”.<sup>636</sup> As such, to help further explore what my respondents tell me in relation to this thesis, the concepts guiding my research will be further explained in the following section.

### **3.1.1- Concepts Guiding the Research (i.e., self-reflexivity, context and a thick description)**

The overarching purpose of this thesis, to borrow Blumer’s symbolic interactionist thinking, is to lift the veil that covers the things one wishes to learn more about by getting close and digging deep through careful study.<sup>637</sup> For him, “the empirical world can ‘talk back’ to our pictures of it or assertions about it [... lending to it] an obdurate character that is the mark of reality”.<sup>638</sup> However, we must remember that reality is a subjective production shaped by our place in society and the dynamics of power that surround us. Therefore, I draw on Tracy’s explanation that what matters most in qualitative research is self-reflexivity, context and a thick description, as they allow us to “understand the world and our place within it”.<sup>639</sup> To her, the eclectic use of these three concepts affords a phronetic approach where my practical wisdom “can be systematically gathered, organized, interpreted, analyzed, and communicated so as to address real world concerns [in order to ...] shed light on the issue and/or open a path for possible transformation”.<sup>640</sup>

Tracy posits that “self-reflexivity draws attention to the ways in which a researchers’ past experiences, points of view, and roles impact the researchers’ interactions with, and interpretations of that which is researched”.<sup>641</sup> These varied interpretations, although, are not to be dismissed but rather celebrated as the lived life of the researcher brings a unique perspective

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<sup>636</sup> Brian Morton, *Starting out in the Evening*, (London: Harcourt Inc., 2007), at 185 [Morton].

<sup>637</sup> Blumer, *supra* note 398, at 39.

<sup>638</sup> *Ibid*, at 22.

<sup>639</sup> Tracy, *supra* note 620, at 2.

<sup>640</sup> *Ibid*, at 4.

<sup>641</sup> *Ibid*, at 2.

to the process where one's subjective background, values, and beliefs fundamentally shape the way one approaches and conducts research.<sup>642</sup> These subjectivities; however, operate in context, and as such, Tracy explains "qualitative research is about immersing oneself in a scene and trying to make sense of it".<sup>643</sup> To her, and to Clifford Geertz, research is an interpretive search for meaning and humanity is an animal suspended in the webs of significance they themselves have spun.<sup>644</sup> However, despite this search for contextual specificity being found "in the ever-changing, biased, and contextualized social conditions of [it's] production",<sup>645</sup> context can "comprehend a particular idea".<sup>646</sup> As context is related to self-reflexivity, so too are both related to the concept of thick description, a concept despite being associated with ethnographic studies will, in relation to this thesis and as explained by Tracy, foster a more fulsome understanding by immersing myself in what has been recounted by my respondents, and paying close attention to the particulars before moving toward grander statements and theories.<sup>647</sup> Geertz also understands that meaning cannot be divorced from this thick contextual and self-reflective description, as according to him, the aim of research is "to draw large conclusions from small, but very densely textured facts; to support broad assertions about the role of culture in the construction of collective life by engaging them exactly with complex specifics".<sup>648</sup>

Qualitative research, when performed properly, should allow inquiry into the human condition that is holistic and comprehensive, and that celebrates the participants' narratives by illustrating that there are multiple interpretations to the research; however, "some are more

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<sup>642</sup> *Ibid*, at 3.

<sup>643</sup> *Ibid*.

<sup>644</sup> Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: NY: Basic Books, 1973), at 5 [Geertz].

<sup>645</sup> Tracy, *supra* note 620, at 3.

<sup>646</sup> *Ibid*.

<sup>647</sup> *Ibid*, at 21, 24 & 35.

<sup>648</sup> Geertz, *supra* note 645, at 28.

theoretically compelling, morally significant or practically important than others”.<sup>649</sup> As such, my interpretation of the narratives communicated to me will be carried out in the pursuit of self-reflexivity, context and a thick description, but also remembering what John Creswell and Cheryl Poth suggest that “qualitative research needs to be on understanding the phenomenon being explored rather than solely on the reader, the researcher, or the participants being studied”.<sup>650</sup> With these concepts in mind, this research also endeavors to understand both constructively and critically how people with criminal records, like me, live within society through a theoretical framework of first-person action research.<sup>651</sup>

### **3.1.2- Concepts Guiding the Research (i.e., first-person action research)**

First-person research, as described by Peter Reason and William Torbert, concerns “skills and methods [which] address the ability of the researcher to foster an inquiring approach to his or her own life, to act awarely and choicefully, and to assess effects in the outside world”.<sup>652</sup> However, as Marshall and Mead suggest, “high quality, deeply questioning first-person action research is greatly supported if it is held within a long-term, second-person inquiry”.<sup>653</sup> Besides the researcher’s own reflections, given in their ‘me’ voice, there is a need to engage in a second-person understanding, which speaks in a ‘we’ voice,<sup>654</sup> as this interpersonal dialogue between mutually concerned others allows, as Carolyn Kagan, Mark Burton, and Asiya Siddiquee suggest, the accumulation of varied narratives from within communities of learning.<sup>655</sup>

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<sup>649</sup> Tracy, *supra* note 598, at 5.

<sup>650</sup> John W. Creswell, & Cheryl N. Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches*, (London: Sage Publications, 2016), at 4.

<sup>651</sup> Judi Marshall & Geoff Mead, “Editorial: Self-reflective practice and first-person action research”, in *Action Research*, Vol. 3, No. 3, (2005) at 235 [Marshall & Mead].

<sup>652</sup> Peter Reason & William Torbert, “The action turn: Toward a transformational social science”, in *Concepts and Transformations*, Vol. 6 No. 1, (2001), at 17.

<sup>653</sup> Marshall & Mead, *supra* note 651, at 236.

<sup>654</sup> Atfab Erfan & Bill Torbert, “Collaborative Developmental Action Inquiry” in Hilary Bradbury-Huang ed., *The SAGE Handbook of Action Research*, (London: SAGE Publications, 2012), at 67 [Erfan & Torbert].

<sup>655</sup> Carolyn Kagan, Mark Burton, & Asiya Siddiquee, “Action Research”, in Carla Willig & Wendy Stainton-Rogers

Therefore, besides accessing my own subjective experience and emotive response of living with a criminal record and the stigma attached to it, this thesis draws from academia to bolster its suppositions about criminal records and how their social effectivity might be internalized. In addition, my research participants and thesis advisors helped me better situate new understanding along the themes of this project. As Steven Taylor suggests, “first person research that aims to unearth deeply held frames is not easy to do on your own”.<sup>656</sup> As such, this research also speaks in the third-person ‘they’ voice that 90-something percent of academia communicates in.<sup>657</sup> Indeed, Kagan, Burton, and Siddiquee posit that the most compelling action research involves all three pathways to understanding.<sup>658</sup> However, since third-person action research seeks to “create a wider community of inquiry, involving people who cannot be known to each other”,<sup>659</sup> its inclusion in this thesis will be left until the end (i.e., Directions for Future Research). Nonetheless, before any real conclusions can be reached the action research process still needs to be further explained.

Action research is an iterative approach to social science and social life that promotes learning; however, social change is difficult to describe in advance as it is a cyclical process where the beginning and end are never really defined.<sup>660</sup> As Sharlene Hesse-Biber and Patricia Leavy suggest, it is more “a process rather than an event”,<sup>661</sup> which I can attest to based on my

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eds., *The SAGE Handbook of Qualitative Research in Psychology*, (London: SAGE Publications, 2012), at 50 [Kagan, Burton, & Siddiquee].

<sup>656</sup> Steven S. Taylor, “Presentational form in first person research: Offline collaborative reflection using art”, in *Action Research* Vol. 2, No. 1, (2004), at 84.

<sup>657</sup> Erfan & Torbert, *supra* note 655, at 69.

<sup>658</sup> Kagan, Burton, & Siddiquee, *supra* note 656, at 50.

<sup>659</sup> *Ibid.*

<sup>660</sup> *Ibid.*, at 40.

<sup>661</sup> Sharlene N. Hesse-Biber & Patricia L. Leavy, *The Practice of Qualitative Research: Second Edition* (London: SAGE Publications, 2010), at 7.

experience undertaking this project. In any case, Wilfred Carr and Stephen Kemmis present three prerequisites for action research to happen:

firstly, a project takes as its subject-matter a social practice, regarding it as a form of strategic action susceptible of improvement; secondly, the project proceeds through a spiral of cycles of planning, acting, observing and reflecting, with each of these activities being systematically and self-critically implemented and interrelated; thirdly, the project involves those responsible for the practice in each of the moments of the activity, widening participation in the project gradually to include others affected by the practice, and maintaining collaborative control of the process.<sup>662</sup>

This thesis meets these minimal requirements as first it concerns a social problem in need of amelioration, this being the notion that the stigmatizing effects of legislated criminal records (in certain situations) are an unfair burden for those who have not only already been processed by the criminal justice system and paid their debt to society, but also those who are to be processed in the future. Secondly, this paper represents the fractal understanding of stigma and emotion, as has been shaped by my initial desire to explore these concepts. This knowledge acquisition has been and will continue to be an iterative approach that “alternates between emic, or emergent, readings of the data and an etic use of existing models, explanations, and theories”.<sup>663</sup> Therefore, as posited by Prachi Srivastava and Nick Hopwood, “iteration is ‘not a repetitive mechanical task,’ but rather a reflexive process in which the researcher visits and revisits the data, connects it to emerging insights, and progressively refines their focus and understandings”.<sup>664</sup> However, as a researcher I am not alone, as thirdly, there seems a structured set of relations between me and my respondent’s, as well as those that I report to, and as such, it was important to recognize this and constantly review how these relations impacted upon this thesis.<sup>665</sup>

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<sup>662</sup> Wilfred Carr & Stephen Kemmis, *Becoming Critical* (London: Deakin University Press, 1986), at 165-166.

<sup>663</sup> Tracy, *supra* note 620, at 184.

<sup>664</sup> Prachi Srivastava, & Nick Hopwood, “A Practical Iterative Framework for Qualitative Data Analysis”, in *International Journal of Qualitative Methods*, Vol 8 No 1 (2009) at 77.

<sup>665</sup> Kagan, Burton, & Siddiquee, *supra* note 638, at 40.

As this thesis examines the lives and experiences of other people who are similarly marginalized as I, there was a need to situate myself in this project as a guiding but also a participatory voice. Despite my own feelings about having a criminal record being front-and-center there was a requisite for me to be a critically conscious ally and include the voice of my respondents within this research in a respectful and authentic way, which was achieved through the academic honesty fostered by my guiding research question(s).

### **3.2- Research Question(s)**

As Juliet Corbin and Anselm Strauss suggest, “persons choose to do research because they have a dream that somehow they will make a difference in the world through the insights and understandings they arrive at”.<sup>666</sup> I have such a vision, in that this thesis’s contribution to the growing research about self-stigma will not just educate me and those who read it, but that it might help ease the burden of my past interaction with the criminal justice system and also help lift the unnecessary social weight of others, who like me, are unable to fully participate in society. As Schensul suggests, my research questions stem from an exploration of my own experiences; however, before any change can be realized, I had to refine my guiding research question(s).<sup>667</sup> Mason likens this process to an academic puzzle in need of solving that, in her view, takes a variety of forms associated with ontological and epistemological choices, as these decisions create the framework to capture the specific context of a research problem.<sup>668</sup> Therefore, as my inquiry concerns the intersection of self-stigma, emotions, and criminal records and their connection to social interaction and power dynamics. Mason suggests that this puzzle concept helps focus that which is vague into that which is qualitatively determinable from within

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<sup>666</sup> Juliet Corbin & Anselm Strauss, *Basics of Qualitative Research: Third Edition* (London: SAGE Publications, 1989), at 15. [Corbin & Strauss]

<sup>667</sup> Schensul: Methodology, *supra* note 616, at 517.

<sup>668</sup> Mason, *supra* note 617, at 18.

successively more refined questions concerning the theoretical links of my research.<sup>669</sup> This process involved moving from the broader theoretical underpinnings outlined in the last section, as well as the literature review section concerning why self-stigma and emotion matter in relation to criminal records, to a refined contextual research project, being the intersection of what and how people emotively feel about any self-stigma they might experience living with a criminal record. To help fill in the gaps in knowledge discussed within this nexus, I hope to find a social explanation to the following quandary:

- In what ways, if any, does having a criminal record cause self-stigmatizing effects and, if so, how do these self-stigmatizing effects make people feel?

These what and how questions, as Mason suggest, do not just concern what the research is designed to address but moreover, expresses the essence of my entire enquiry.<sup>670</sup> Solving this puzzle will help uncover “what [...] salient actions, events, beliefs, attitudes, social structures and processes are occurring [...] and] how do participants problematize their circumstances and shape their social action”.<sup>671</sup> As such, to discover these important answers, the method upon which this thesis relies to collect data is outlined in the next section.

### **3.3- Method of Data Collection**

During any journey, academic or not, if one gets lost they may never reach their destination. Taking careful and methodical steps can help in this respect. As explained by Schensul, “methods refer to the ways in which qualitative researchers collect data”.<sup>672</sup> For my purposes, the data collection method used to explore my research question(s) was the interview, which was a face-to-face process of posing questions to a research relevant subject population

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<sup>669</sup> *Ibid.*, at 20.

<sup>670</sup> *Ibid.*, at 19.

<sup>671</sup> Catherine Marshal & Gretchen B. Rossman, *Designing Qualitative Research: Fifth Edition* (London: SAGE Publications, 2011), at 69.

<sup>672</sup> Schensul: Methods, *supra* note 633, at 521.

(i.e., Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor).<sup>673</sup> Again, for further information concerning all interviews see Appendix D.

### **3.3.1- The Interview (i.e., the semi-structured interview)**

Herbert and Irene Rubin propose that when addressing research questions that deal with morally ambiguous or sensitive matters, the qualitative interview process is similar to an extended conversation with the purpose of exploring in detail the experiences, motives, and opinions of others in an attempt to see the world from their perspective.<sup>674</sup> While there are a variety of interview types as explained by Schensul,<sup>675</sup> Rosalind Edwards and Janet Holland suggest that whatever type is chosen, there is a need to have it relate to my ontological and epistemological needs.<sup>676</sup> By doing so, Steinar Kvale explains, the “subjects not only answer questions [...] but themselves formulate in a dialogue their own conceptions of their lived world [...] that can lead to knowledge that can be used to enhance the human condition”.<sup>677</sup> As such, to better understand if and how the self-stigma of criminal records is felt by those who live in Canadian society, a semi-structured interview process was chosen to explore my research question(s). As Mason and others explain, this exchange of dialogue in one-to-one interactions produces an informal and fluid investigation of a themed topic.<sup>678</sup>

As the semi-structured interview is a conversation with a purpose, and since my time with my research participants was limited to roughly an hour, I needed to engage in thorough

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<sup>673</sup> *Ibid*, at 523.

<sup>674</sup> Rubin J. Herbert & Irene S. Rubin, *Qualitative Interviewing the art of hearing data: second edition*, (London: Sage Publications, 2005), at 3-5.

<sup>675</sup> *Ibid*.

<sup>676</sup> Rosalind Edwards & Janet Holland, *What is Qualitative Interviewing?* (New York: Bloomsbury, 2013), at 2 [Edwards & Holland].

<sup>677</sup> Steinar Kvale, *Interviews: An Introduction to Qualitative Research Interviewing* (London: Sage Publications Inc., 1996), at 11 [Kvale].

<sup>678</sup> Mason, *supra* note 617, at 62-63, Edwards & Holland, *supra* note 677, at 3; & Schensul: Methods, *supra* note 633, at 523.

preparation, particularly in regards to the structure and flow of the interview,<sup>679</sup> since it concerned the collection of the data upon which the entirety of my research project was based. Mason suggests a need to make a topic guide (see Appendix E) on the themes to be addressed during the interview,<sup>680</sup> and within these themes, she explains, some questions are better than others.<sup>681</sup> Similarly, Edwards and Holland suggest that specific questions have to be formulated to be open ended, in that they cannot be simply answered with a yes or no, that they do not have a double meaning or interpretation, and that they do not lead subjects to a particular answer or direction.<sup>682</sup> However, being my first time ever interviewing anyone, my ability to keep the conversation flowing in such a manner was somewhat haphazard. In hindsight it accomplished what I needed and my skill improved with succession/reflection.

Also, before addressing these more qualitative questions, warming up with demographic questions like age, gender, education, race, employment, status of significant other, children, and the time that has elapsed since their last conviction, were used to ease tension and build rapport. With some connection attempted, Mason explains, the possibility of generating meaningful data can commence.<sup>683</sup> However, having done this with every respondent, I cannot attest to any better efficacy, but do think this step was beneficial not just as an introduction but to narrow the focus of what was to be discussed.

Since this thesis is concerned with how people with criminal records experience self-stigma and how they talk about it, my main line of questioning revolved around how my participant's criminal record has affected their life. This question was followed up with probes in

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<sup>679</sup> Mason, *supra* note 617, at 67.

<sup>680</sup> *Ibid.*

<sup>681</sup> *Ibid.*, at 68.

<sup>682</sup> Edwards & Holland, *supra* note 677, at 3.

<sup>683</sup> Mason, *supra* note 617, at 68.

relation to what they specifically discussed or in regards to other possible stigmatizing situations concerning employment, adoption, international travel, volunteer work, citizenship, education, jury duty, house rental, dating, insurance, and retirement homes. Also, when applicable I cautiously drew upon my own experiences of internalized stigma to prompt shared experiences with my research participants and in order to elicit from them how these situations made them feel. This sharing, however, was sparingly used, as I thought my own experiences were, at the time less intense compared to my respondent's. Nevertheless, on occasion I did acknowledge their narratives with my own similar but different experiences, making sure as well, to thank them sincerely for sharing, in order to foster a spirit of inclusion/normalcy. Additionally, I asked if my participant's understand themselves as people who have a criminal record, again drawing on my own life history when necessary.

This method was selected to stimulate my research sample into discussion and from out of such helpful encouragement the themes provided produced relationships with which I was able to engage.<sup>684</sup> For these patterns to emerge in an academically meaningfully but still organic way from my semi-structured interviewing process, the "respondents [... were] allowed to answer in their own words and at length in order for me to understand the interviewee's meanings, perceptions, beliefs, attitudes, and descriptions of their own behavior".<sup>685</sup> However, this autonomous leeway needed at times to be encouraged as, has been explained in regards to the male gender, emotions are not always something accessible or describable particularly when self-stigma limits one's self-esteem (the positive or negative evaluations of the self, as in how we feel)<sup>686</sup> and self-efficacy (how well one can execute courses of action required to deal with

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<sup>684</sup> Schensul, *Methods*, *supra* note 633, at 524.

<sup>685</sup> *Ibid.*

<sup>686</sup> Elliot, R. Smith, Diane M. Mackie & Heather M. Claypool, *Social Psychology Fourth ed.*, (New York, Psychology Press, 2014), at 13.

prospective situations).<sup>687</sup> As such, the proclivity of my respondent's to guard their emotions, as well as their actual ability to express emotion seemed an obstacle that sometimes benefited from a more direct approach within the interview process. As Barry recounts: "That whole feeling thing I am not good with. It makes me think... it makes me think hard but yeah I can't think of any".

Additionally, besides focusing on the themes that I as a researcher am concerned with, the semi-structured interview also offers space for "the interviewee to talk from their own perspective using their own frame of reference and ideas and meanings that are familiar to them".<sup>688</sup> Despite not achieving a prolonged discussions on any one raw emotion, all of the respondents took full advantage of this platform and recounted their experiences to the degree they were comfortable in response to the questions posed. This level of openness enabled me to respond to the answers given, to trace the meaning that was purposefully attached to the conversation, to discover unexpected themes, as well as adjust the content of future interviews and the emphasis of the research as a result of issues that emerged during the process.<sup>689</sup>

The most important occurrence, regardless of method chosen was that a narrative be elicited from the interviewee, in order to grant some level of access to Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor's lived world.<sup>690</sup> Besides answering questions, each are telling a story related to what they were asked, and as Laurel Kiser, Barbara Baumgardner, and Joyce Dorado's poignant rhetorical question asks, "who are we, but for the stories we tell?".<sup>691</sup> However, despite being semi-structured in form the goal of my research conversations were

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<sup>687</sup> Albert, Bandura, "Self-efficacy mechanism in human agency", in *American Psychologist*. Vol. 37, No. 2, (1982), at 122.

<sup>688</sup> Edwards & Holland, *supra* note 677, at 30.

<sup>689</sup> *Ibid.*

<sup>690</sup> *Ibid.*, at 42.

<sup>691</sup> Laurel J. Kiser, Barbara Baumgardner, & Joyce Dorado, "Who Are We, But for the Stories We Tell: Family Stories and Healing", in *Psychological Trauma*, Vol. 2, No. 3, (2010), at 243.

determined by structure and purpose,<sup>692</sup> and through the interview process I attempted “to gather information on individual experience, beliefs, behaviors, and meanings in order to discover and explore the range of variation among individuals and to find patterns of similarity and difference”.<sup>693</sup> Nevertheless, before presenting the analysis of what my sample population shared with me in regards to qualitative significance, I must first address other pertinent aspects of my research design.

### **3.4- Other Pertinent Aspects of My Research Design**

To find an answer to my overarching research question(s), as Robin Dunbar suggests, the success of any research project depends to a large extent on the amount of forethought devoted to the decision-making process before a researcher ever interacts with their subject matter.<sup>694</sup> As Edwards and Holland advise, within the qualitative process, sample population, sample size, ethics, and the tools to collect the data need to also be delineated.<sup>695</sup>

#### **3.4.1- Research Participants**

My sample population is made up of people both willing to participate and relevant to my study question, meaning that besides being agreeable, they also needed to have criminal records.<sup>696</sup> It is from interacting with this demographic of society that I hoped to learn about the social, cultural, and physical contexts within which these individuals live, work, and interact.<sup>697</sup> However, since people with criminal records are a marginalized population, I needed to be mindful not to perpetuate their vulnerability through my interaction with them. As Colin Bell suggests, the qualitative research process is understood to be “done on the relatively powerless

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<sup>692</sup> Kvale, *supra* note 678, at 6.

<sup>693</sup> Schensul: Methods, *supra* note 633, at 524.

<sup>694</sup> Robin I. M. Dunbar, “Some Aspects of Research Design and Their Implications in the Observational Study of Behaviour”, in *Behaviour*, Vol. 58, No. 1, (1976), at 78.

<sup>695</sup> Edwards & Holland, *supra* note 677, at 65.

<sup>696</sup> Schensul, Methodology, *supra* note 633, at 519.

<sup>697</sup> *Ibid*, at 521.

for the relatively powerful”.<sup>698</sup> Therefore, despite having a criminal record myself, I needed to remember as Charles Biggs reminds, not to reinforce my research participant’s exclusion by confirming and legitimizing their possible social perception of inequality by exploiting them for the information I desired, and not the information that they wanted to share.<sup>699</sup> As Val Gilles points out, my level of education may no longer endear me as a similarly situated individual; however, she suggests that a commitment to making my interviewees’ voices heard through the collection and presentation of interview data could allow my research participants to tolerate my questions.<sup>700</sup> This seems to have occurred, as every respondent expressed genuine content to have helped, and all but one needed to be repeatedly persuaded to take their compensation for participating. As Kay Cook suggests, action research methods have been identified as offering the most promise in dissolving traditional research hierarchies.<sup>701</sup> Therefore, despite similarity or difference, my interaction with my respondents, as Rosalind and Holland suggest, if done appropriately, provides data that offers a glimpse into the world in which these people actually live,<sup>702</sup> and this is what this thesis endeavoured to reveal.

In order to secure an applicable research population, I used a common qualitative research technique known as nonprobability sampling where researchers use their judgment to select a sample that is relevant to their needs.<sup>703</sup> Kristie Saumure and Lisa Given’s describe

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<sup>698</sup> Colin Bell, “Studying the Locally Powerful: Personal reflections on a research career”, in Colin Bell & S. Cencel, eds., *Inside the Whale*, (Sydney: Pergamon Press, 1978), at 25.

<sup>699</sup> Charles I. Biggs, “Interviewing, Power/Knowledge, and Social Inequality”, in Jaber F. Gubrium & James A. Holstein, eds., *Postmodern Interviewing*, (London: Sage Publications, 2003), at 244.

<sup>700</sup> Val Gilles, “Researching through working class personal networks: Issues and dilemmas in bridging different worlds”, in Rosalind Edwards, ed., *Social Capital in the Field: Researchers’ Tales*, (London: London South Bank University, 2004), at 15.

<sup>701</sup> Kay E. Cook, “Marginalized Populations”, in Lisa M. Given, ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2*, (London: Sage Publications Inc., 2008), at 562.

<sup>702</sup> Edwards & Holland, *supra* note 664, at 80.

<sup>703</sup> Kristie Saumure & Lisa M. Given, “Nonprobability Sampling”, in Lisa M. Given, ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2*, (London: Sage Publications Inc., 2008), at 496.

convenience, snowballing, and purposive sampling methods,<sup>704</sup> and all three were used to acquire a useable sample size of my research demographic. Starting with the convenience of knowing someone (besides myself) who has been criminalized (e.g., Martin), I snowballed with his help to find more like situated individuals (e.g., Charles,), that met the purposes I wished to attend to in my research (e.g., having a criminal record).<sup>705</sup> However, despite contacting people suggested by Martin and Charles, the process resulted in more promises and cancellations than conversations. Putting up recruitment posters may have helped; however, since monetary compensation was offered, short of asking people to provide proof of their criminal record, which I did not think was appropriate, I wanted to ensure that those who received it, were entitled to it. Therefore, I once again depended on the sampling techniques discussed, but this time started with the convenience of my personal contact list of friends who, after more promises and cancellations, were able to help me find additional suited people to interview (e.g., Barry, Bobby, Timothy, Caleb, and Trevor). While not providing information that could personally identify any one individual, for context, it may be useful to note that, of my respondents, six are fathers, two are heating and air conditioning technicians, two are cable technicians, two are salespeople, and one a bricklayer. Additionally of note, is that my research participants are composed of a cohort that is underdeveloped if not absent from the present literature. Missing from the corpus is a better understanding of those people, like my respondents, who are determined to persevere in a pro-social manner despite their stigmatization and criminalization. These are people who have been living with a criminal record for a longer time than most participants in other studies, and thus they enable us to see the range of longer

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<sup>704</sup> *Ibid.*

<sup>705</sup> *Ibid.*

term responses, and emotional impacts of living with a criminal record over the longer term.

### 3.4.2- Sample Size

The question of sample size asks, ‘how many interviews is enough?’ and is particularly pertinent when considering a qualitative research study.<sup>706</sup> Edwards and Holland discuss the idea of saturation as a cut-off point, where saturation qualitatively concerns a number or place to stop sampling, as the respective interviewees are not telling the interviewer anything that they have not before.<sup>707</sup> However, they also explain that the desired number is somewhat arbitrary and dependent upon one’s circumstances.<sup>708</sup> What seems important is, as Kathy Charmaz proposes, that the quality and credibility of the data garnered from my research participants is rich and relevant enough that it subsequently leads to categories of information that attests to real world transferability.<sup>709</sup> Additionally, as sample size is dependent upon resources available, be they financial, economical and/or institutional,<sup>710</sup> I worked within my means to best address my research question(s). Therefore, since it has been explained that my epistemic community allows between five and ten interviews as a sufficient number, that was the sample size I targeted. However, despite, as discussed, that finding people to interview was a process of patience and luck, I was able to find seven respondents. Their age ranged between thirty and fifty, and perhaps a greater variance amongst them would have provided a more robust understanding of how having a criminal record makes people feel. However, as suggested, this middle age range lends itself to people who have had some experience in life, living with their criminal records.

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<sup>706</sup> *Ibid.*

<sup>707</sup> *Ibid.*

<sup>708</sup> Edwards & Holland, *supra* note 677, at 66.

<sup>709</sup> Kathy Charmaz *Constructing Grounded Theory: A practical guide through qualitative analysis* (London: Sage Publications, 2006), at 18 [Chamaz].

<sup>710</sup> Edwards & Holland, *supra* note 677, at 66.

Unfortunately my youngest potential interviewee (twenty-four), proved continually unreliable, and a promised interview from another source (seventy) and a possible acquaintance (seventy) never materialized, in addition to five other interviews that never occurred.

### **3.4.3- Ethical Considerations**

The third consideration pertinent to my research design is ethical considerations, for as a researcher at Carleton University, I needed to familiarize myself with and adhere to a regulatory framework in order to “maintain the highest standards of honesty, integrity and ethical behavior”.<sup>711</sup> Therefore, before any research started I had to “obtain all necessary approvals”, and given my research involves human participants, undertaking my thesis required “a high level of rigour”.<sup>712</sup> As such, and with the help of the Ethics Board’s suggestions, information leaflets provided material regarding what my research was about, what taking part in the study involved, any benefits or risks involved, promises of confidentiality and anonymity, rights to withdraw, and who to approach for further information or to complain to about the research process.<sup>713</sup> However, besides acquiring free, informed, and ongoing consent, there was a need to archive and manage data collected “in accordance with [any] applicable funding agreement, institutional policies and/or laws, regulations, and professional or disciplinary standards in a manner that will allow verification or replication of the work by others”.<sup>714</sup> Therefore, with all these considerations attended too and in accordance with Carleton Universities Policy on the Responsible Conduct of Research the formal recruiting process, correspondence, consent, and security of any information I gathered from my research participants is found in Appendix F.

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<sup>711</sup> Policy on the Responsible Conduct of Research (Office of the Vice-President Research and International: Carleton University, 2014), at 3.

<sup>712</sup> *Ibid.*, at 3.

<sup>713</sup> Edwards & Holland, *supra* note 677, at 67.

<sup>714</sup> *Ibid.*

Additionally, since my thesis deals with a spectrum of emotion, there was a possibility of triggering unpleasant memories and as such, there was a need to offer services that could address any discomfort that discussions surrounding what living in society with a criminal record may bring to the forefront. As such, numbers of two twenty-four hour, seven-day a week distress lines were provided in the debriefing letter (see Appendix F). Furthermore, it was strongly suggested that interviews were to be conducted in a public place like Carleton University. However, not a single respondent wanted to meet on campus, and only one person agreed to meet at a public library of their choosing (e.g., Barry). Instead, people insisted on meeting at their own house (e.g., Martin, Bobby and Caleb), their work (e.g., Trevor) or my house (e.g., Charles and Timothy). Given the manner in which I found my respondents, through mutual connections, the safety concerns were very low, and it made my respondents comfortable and showed I cared enough to trust them or at least not overly inconvenience them.

#### **3.4.4- Tools for Data Collection**

With qualitative interviews, as Tracy explains, words are the main currency of the process and are subject to analytic interpretation, therefore, with the consent of my participants I took handwritten notes and recorded our interviews.<sup>715</sup> While this method may have been discomforting for participants who felt self-conscious about having their words recorded,<sup>716</sup> I found that none of those interviewed were overly concerned. However, Barry, Bobby and Timothy seemed more at ease when the recorder was off the table, as well, Martin and Charles disclosed pertinent information after their interviews were done. I relied heavily on audio recordings as they afforded me efficacy during and after the interview.<sup>717</sup> They allowed me to

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<sup>715</sup> Tracy, *supra* note 620, at 69.

<sup>716</sup> *Ibid.*

<sup>717</sup> *Ibid.*

focus on listening, probing and following up on what was being said and on maintaining eye contact with my interviewee.<sup>718</sup>

As well, having everything discussed recorded allows, as Kirstin Luker explains, metaphors, expressions, themes, ideas, and emotions to be accessible long after they have been spoken, for sometimes the ear is not sophisticated enough to recognize them at the time.<sup>719</sup> Similarly, not just timbre and tone of voice is available but also verbatim quotes.<sup>720</sup> Additionally, I made sure to take notes on anything I thought pertinent, for besides the words being recorded, there was a need to “make careful analytic choices about the notation of laughter, pitch, volume, tone of voice, sarcasm, silence, and various contextual details”.<sup>721</sup> As such, I am able to say that all respondents laughed along at some points with what they said, be it nervous or otherwise. Barry, Bobby, and Mason were more somber in their telling of their stories while Timothy, Caleb, and Charles were more vociferous in their opinions, with Trevor, despite whispering the entire time, fluctuating between the two. Additionally, despite sarcasm being used by all, the overall tone was one of an earnest desire to answer what was asked them the best and only way they knew how. With these aspects of my research design attended to the analysis of the data collected from my respondents began.

### **3.5- Data Analysis**

Chamaz suggests that data analysis demystifies the process of qualitative inquiry for the analytic categories and the relationships that are drawn from such research provides conceptual meaning for the studied experience.<sup>722</sup> To do this, Corbin and Strauss posit a need “to step

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<sup>718</sup> *Ibid.*

<sup>719</sup> Kirstin Luker, *Salsa Dancing into the Social Sciences: Research in an Age of Info-glut* (Cambridge: Harvard University Press, 2008), at 174 [Luker].

<sup>720</sup> Edwards & Holland, *supra* note 677, at 70.

<sup>721</sup> Tracy, *supra* note 620, at 180.

<sup>722</sup> Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (London, Sage Publications, 2006), at 3-4 [Charmaz].

beyond the known and enter into the world of participants, to see the world from their perspective and in doing so make discoveries that will contribute to the development of empirical knowledge”.<sup>723</sup> However, to them this only becomes possible with “an intuitive sense of what is going on in the data; trust in the self and the research process; and the ability to remain creative, flexible, and true to the data all at the same time”.<sup>724</sup> Therefore, despite data analysis being perhaps the penultimate step in my research, it is made up of smaller iterative steps given the need to “systematically organize and prepare my data”<sup>725</sup> so that it can be coded with the subsequent goal of discovering useful information that suggests conclusions and supports decision-making with regards to policies related to criminal records.<sup>726</sup>

### 3.5.1- Organizing the Data

Nancy Pelosi tells us “don't agonize, organize”,<sup>727</sup> advice that Tracy similarly suggests applies to the iterative approach of research as there is a need to ensure everything that I have accumulated is organized in order that the end goals of this thesis can be better realized.<sup>728</sup> She suggests that relevant materials should be interacted with in a way that makes sense to the researcher, be it chronological, type, source, or whatever schemata of my choosing, there is a need to reflect on the ways in which I personally, process and organize the data into intuitive categories that will best motivate me to interact with it”.<sup>729</sup> In regards to my research folders, they were categorized thematically as criminal records, criminalization, stigma, emotions, analytical theories, methodological theories, research participants, interviews, transcripts, and

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<sup>723</sup> Corbin & Strauss, *Basics of Qualitative Research: Third Edition* (London: SAGE Publications 1989), at 16.

<sup>724</sup> *Ibid.*, at 16.

<sup>725</sup> Tracy, *supra* note 620, at 184-185.

<sup>726</sup> Schensul: Methodology, *supra* note 616, at 521.

<sup>727</sup> Rachel Maddow, “Nancy Pelosi: Don’t agonize, organize”, in *MSNBC*, (February, 2012) online: <<https://www.msnbc.com/rachel-maddow-show/watch/nancy-pelosi-dont-agonize-organize-44137027703>>.

<sup>728</sup> Tracy, *supra* note 620, at 185.

<sup>729</sup> *Ibid.*

data analysis. Through continual housekeeping of this filing system, I was able to update that which I thought was relevant and necessary. Nevertheless, interaction with my thesis supervisor enabled the addition of folders in regards to agency, surveillance, and gender, not to mention an overall feeling that I was moving in the right direction. As well, there was a need to be mindful in that no matter how time consuming this process was, it, was important, and needed to be treated as such, for as Tracy recommends, “without a well-organized data set, analyzing and writing will feel about as inviting as trekking through an overgrown jungle”.<sup>730</sup>

### 3.5.2- Preparing the Data

Miguel de Cervantes tells us that being “prepared is half the victory”,<sup>731</sup> advice Tracy similarly offers within an analogy of a chef cooking a meal, as the food is generally better when time is put into prepping the ingredients, and following the recipe.<sup>732</sup> To her, so too will a research project benefit if time is taken to make the tough decisions about what to include and exclude, as the analysis of data involves presenting the results in a way that communicates the most important ideas.<sup>733</sup> Therefore, despite my own familiarity with the self-stigmatizing effect of criminal records, and what has been suggested as relevant within the literature review and theory section of this paper, in order to better navigate the world of Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor, what they have told me during the interview process needed to be examined closely. The best way to do this was to produce and process printed transcriptions of our conversations.<sup>734</sup> Tracy explains that besides becoming a better interviewer from listening and transcribing (which I think occurred), familiarity with the interviews

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<sup>730</sup> *Ibid.*

<sup>731</sup> Miguel de Cervantes Saavedra, *Adventures of Don Quixote de la Mancha*, (London: Wordsworth Editions, 1993) at 346.

<sup>732</sup> *Ibid.*

<sup>733</sup> Tracy, *supra* note 620, at 186.

<sup>734</sup> *Ibid.*, at 178-180.

generated through the process of transcribing “is a key part of the data analysis [... and] facilitates the close examination of data, which is so imperative for interpretation”.<sup>735</sup> I made sure not to rush, nor move on to someone new before fully attending to the particular transcript I was currently trying to honour. As Tracy suggests, the transcription process is time consuming and dependent on many factors, and I needed to budget my resources to attend to this part of my qualitative research as it was important.<sup>736</sup> Generally, when I did an interview, I made sure to note anything I thought pertinent about what was going on, and afterwards I tried to listen to the recording as soon as possible in order to transcribe what was said and attribute any emotional affect in relation to what was communicated. Transcription, besides being mandatory, is necessary and was done with utmost care, for “transcribing decisions profoundly impact the meaning of the data”.<sup>737</sup>

### **3.5.3- Coding the Data**

The last step of this methodology section concerns immersing myself in my data by reading and re-reading it and then undertaking a process of categorization and systemization known in qualitative research as coding.<sup>738</sup> I chose a manual coding process that involves, the grouping according to descriptive first-level codes that are not concerned with the overarching question of ‘what is going on?’ but rather deal with the focused question of ‘what is going on here?’.<sup>739</sup> Also called open coding by Johnny Saldaña, it is in this initial stage of the coding process which I, the researcher am trying to open up meaning in the data.<sup>740</sup> In doing so, a

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<sup>735</sup> *Ibid*, at 178.

<sup>736</sup> *Ibid*.

<sup>737</sup> *Ibid*, at 180.

<sup>738</sup> *Ibid*.

<sup>739</sup> *Ibid*, at 188.

<sup>740</sup> Johnny Saldaña, *The Coding Manual for Qualitative Researchers: 2<sup>nd</sup> ed.* (London: Sage Publications, 2009) [Saldaña]; as quoted in Tracy, *supra* note 8, at 189.

summary of data content “as belonging to, or representing, some type of phenomenon”<sup>741</sup> was produced being “most often a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data”.<sup>742</sup> As such, the histories recounted by my respondents were thus mined for applicable codes with special attention in regards to self-stigma and emotion. As Saldaña explains, just as a title represents and captures the primary content or essence of a book or poem, “so does a code represent and capture a datum’s primary content and essence”.<sup>743</sup> Therefore, by thoughtful line-by-line examination of the data and assigning words or phrases that capture their quintessential spirit, these qualitatively explainable labels became the code through which my research story is expounded.<sup>744</sup>

In regards to this thesis, the coding in question has a cypher found in various research about self-stigma. The self-stigma scales proposed by Ritsher, Otilingam and Grajales, and King *et al.*, who despite delving into the internalized stigma of mental illness, are valid for my project as again Butler suggests that the unique reworking of other people’s research can render valuable information.<sup>745</sup> Boyd-Ritsher, Otilingam, and Grajales express this line of thinking as they suggest their research is applicable to whatever measure one might want by simply replacing mental illness with another variable, as in my case criminal records.<sup>746</sup> Additionally, despite Sarah Philips pointing out that “no measurement tool for self-stigma had been developed for use with offenders”<sup>747</sup> she also explains that the tradition of understanding the self-stigmatizing

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<sup>741</sup> Tracy, *supra* note 620, at 189.

<sup>742</sup> Saldaña, *supra* note 748, at 3.

<sup>743</sup> *Ibid.*

<sup>744</sup> *Ibid.*, at 8.

<sup>745</sup> Butler, *supra* note 313, at 19.

<sup>746</sup> Boyd-Ritsher, Otilingam, & Grajales, *supra* note 605, at 20.

<sup>747</sup> Sarah Phillips, *Offenders’ Perceptions of Stigma: Importance and Measurement*, (Master’s Thesis, Drexdel University, 2016), at 10.

effect of criminal records has been to borrow from mental health research.<sup>748</sup> To her this is problematic as “none of these studies used measures developed specifically to address the stigma associated with incarceration”.<sup>749</sup> However, she admits that past “scales that have been developed specifically for use with offenders are fairly comprehensive in their scope”.<sup>750</sup> As such, for the purpose of this thesis, through a deft refashioning of the various self-stigma scales, in addition to what has already been discussed (i.e., literature review and theory sections), a more fulsome understanding of self-stigma and the feelings attached to it should be found. As stated, correlation does not mean causation; however, statistically the research of Ritsher, Otilingam, and Grajales show “positive correlations with measures of self-stigmatizing beliefs and depressive symptoms, [... along with] negative correlations with measures of self-esteem, empowerment, and recovery orientation”.<sup>751</sup> Likewise, King *et al.* explain in a similar manner that their “instrument directly reflects the lived experience of stigma and may help us to extend our current theoretical concepts”.<sup>752</sup> Furthermore, Lebel posits that a past interaction with the criminal justice system is self-stigmatizing in and of itself,<sup>753</sup> and the contribution of Winnick and Bodkin explains that self-stigma is found in a pattern of modifying one’s behavior in accordance to secrecy, withdrawal and avoidance.<sup>754</sup> In addition, Chui and Cheng suggest that their “participants perceived themselves as facing discrimination, [...] adopt[ing] a ‘don’t ask, don’t tell’ strategy in disclosing their identity as ex-prisoners”.<sup>755</sup> Therefore, with the help of these recognized indices of self-stigma, I attempted to find confluence between what was said by

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<sup>748</sup> *Ibid*, at 12.

<sup>749</sup> *Ibid*.

<sup>750</sup> *Ibid*, at 13.

<sup>751</sup> Boyd-Ritsher, Otilingam, & Grajales, *supra* note 606, at 1.

<sup>752</sup> Michael King *et al.*, *supra* note 607, at 252.

<sup>753</sup> Lebel: 2012, *supra* note 609, at 72-73.

<sup>754</sup> Winnick & Bodkin, *supra* note 608, at 308.

<sup>755</sup> Chui & Cheng, *supra* note 378, at 671.

my different participants. This process yielded the themes of fear and anxiety, shame and embarrassment, discrimination and alienation, sadness, anger, as well as agency by which I coded my data.

From within my data, notwithstanding attempting to capture the objectively subjective spirit of any self-stigma communicated, I also wanted to qualitatively explore the emotional affect that may be affixed to how someone might understand themselves in relation to how society understands them. As such, I endeavored to extract from my participants how they feel in order to expound my research story, not to downplay their lived histories but to bring to light any feelings attached to how people with criminal records sense their criminalization. To facilitate this Cowen and Ketlner's twenty-seven distinct emotions were remembered,<sup>756</sup> but reporting whatever emotion or feeling described by those interviewed when asked, how they feel, was the code through which my research story is expounded. However, choices were made in regards to how detailed my coding definitions were, for as Tracy explains, "both *lumping* your data into large bins and *fracturing* them into smaller slices have advantages and disadvantages".<sup>757</sup>

In summation, it has been said that the journey is more important than the destination, and reflectively in regards to this methodology section I would have to agree, the journey is paramount, for without this exploratory excursion into the what and how of qualitative research, I would have been lost. Although, I developed a clearer understanding of what lay ahead for me academically in regards to completing this thesis; choosing a research orientation was shaped by my understanding of reality, which in turn bracketed the knowledge that was acquired concerning the answers of my research question(s) (e.g., In what ways, if any, does having a criminal record cause self-stigmatizing effects and, if so, how do these self-stigmatizing effects

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<sup>756</sup> Cowen & Ketlner, *supra* note 589.

<sup>757</sup> *Ibid.*

make people feel?). The intersection of self-stigma, emotion, and criminal records, as explained by the relevant literature, points to a phenomenon that is a dependent creation of society and its asymmetries of power. Investigating these concepts interpretively and critically further with the aid of a semi-structured interview process helped discern relational patterns. However, only with proper iterative analysis and continual reflection on the research data were the experiential lives of those with criminal records further realized in regards to a thematic emotive understanding of self-stigmatization. Therefore, the methodological process outlined here, was one small step in a longer journey. Nevertheless, this section was a major step in ensuring that every stage of my thesis led me in a worthwhile academic direction towards understanding how criminal records and stigma intersect and what if any help such information can provide, especially when each step is grounded in qualitative rigour and validity.

## Chapter 4- Analysis of Interviews

This last chapter explains the efficacy of using a semi-structured interview to find out what my seven respondents have to say about their criminal records. However, Andrea Doucet advises “rather than claiming access to knowing subjects, all we can know is their narratives or their narrated subjectivities”.<sup>758</sup> She further suggests that the stories people tell us “may be, as it were, as good as it gets for researchers striving to make bold knowledge claims about the messy, illusive and complex stories that emerge from people’s everyday lives”.<sup>759</sup> With this understanding, and without any strict adherence to narrative as a method of analysis,<sup>760</sup> this chapter will present conceptual-thematic descriptions based on interpretive explanations that validate or repudiate any academically relevant data disclosed by those interviewed concerning their emotive understanding of the possible self-stigmatizing process of their criminal record. As Thomas Annesley suggests, the discussion attached will subsequently demonstrate my “ability as a researcher to think critically about an issue, to develop creative solutions to problems based upon a logical synthesis of the findings, and to formulate a deeper, more profound understanding of the research problem under investigation”.<sup>761</sup>

### 4.1- Themes

In regards to the overarching theological concepts guiding this research (e.g., context, self-reflexivity, a thick-description, and first-person action research) the place to best begin to appreciate the answers shared by my respondent’s is as Van Mannen suggests to look “at my own life experiences [...as they] are immediately accessible to me in a way that no one else’s

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<sup>758</sup> Andrea Doucet, “From Her Side of the Gossamer Wall(s): Reflexivity and Relational Knowing”, in *Qualitative Sociology*, Vol. 71, (December, 2007), at 84[Doucet].

<sup>759</sup> *Ibid.*

<sup>760</sup> Catherine Kohler Riessman, “Narrative Analysis”, in Lisa M. Given, ed., *The Sage Encyclopedia of Qualitative Research Methods Volume 1 & 2*, (London: Sage Publications Inc., 2008), at 539-540 [Riessman].

<sup>761</sup> Thomas M. Annesley, “The Discussion Section: Your Closing Argument”, in *Clinical Chemistry*, Vol. 56 (November, 2010), at 1671.

are”.<sup>762</sup> I share these throughout this section as applicable academic anecdotes, as they add to the understanding of what has been said or not said by my participants. However, despite starting with my own subjective beliefs, it is from this position of self-reflectivity that more context will be lent, and a thicker description will be found within my subsequent interpretations. As Tracy posits, “contextual explanations and situated meanings are integral to ongoing sense making”.<sup>763</sup> Additionally, L. David Brown suggests that action research “offers a greatly-needed forum [...] that is central to generating both new knowledge and innovations in practice relevant to many critical problems”.<sup>764</sup> As such, this section discusses the way that the emotions of fear, shame, discrimination, alienation, sadness, and anger 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. Therefore, this section is where this research lends itself to better understand and share what Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor conceivably said about how having a criminal record makes them feel.

#### **4.1.1- Fear and Anxiety**

The Oxford English dictionary explains fear as “an unpleasant emotion caused by the threat of danger, pain, harm, or the likelihood of something unwelcome happening”.<sup>765</sup> Henry

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<sup>762</sup> Van Manen, *supra* note 21, at 54

<sup>763</sup> Tracy, *supra* note 620, at 3.

<sup>764</sup> L. David Brown, in *Action Research*, Hilary Bradbury and Peter Reason eds., Vol. 16, No. 3 (September, 2018) online: <[https://us.sagepub.com/en-us/nam/journal/action-research\\_sage](https://us.sagepub.com/en-us/nam/journal/action-research_sage)>.

<sup>765</sup> Maurice Waite, ed., “Fear”, in *Pocket Oxford English Dictionary: eleventh edition*, (Oxford: Oxford University Press, 2013), at 329.

David Thoreau wrote that “nothing is so much to be feared as fear”.<sup>766</sup> Perhaps the foremost fear associated with having a criminal record is the disclosing of one’s past interaction with the criminal justice system. In revealing one’s status, labelling theory posits that fear of the official label leads to social distancing.<sup>767</sup> This is discussed by Goffman when he suggests that the sharing of such social information negates one’s perception of normalcy, and results in one becoming perceived as tainted, bad and dangerous to those around them.<sup>768</sup> However, self-stigma penetrates a little deeper, altering, as Moore, Tangney, and Stuewig propose, one’s own perceptions about oneself.<sup>769</sup> This can, as Charles describes, leave one so marked, “anxious”, “nervous”, and “shaking” frightened for example by what Trevor describes as “a skeleton in the closet, a hundred percent, anytime”. I myself was fearful of having my children’s daycare know that I had been found guilty of breaking the law, in a manner similar to how David Vogel, Nathaniel Wade and Shawn Haake suggest that self-stigma is found in the “fear of embarrassment”.<sup>770</sup> As well, I can honestly say that, despite working on this thesis, I still fear the shame and embarrassment of someone finding out. As explained by King *et al.*, the “fear of disclosure is always the result of internalised stigma”<sup>771</sup> and as such, this section concerns how the emotion of fear surrounds a criminal record. The narratives of my similarly situated research participants run parallel to the research showing how feelings of social withdrawal suggest self-stigmatizing behavior through a “don’t ask don’t tell strategy”<sup>772</sup> of avoidance and

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<sup>766</sup> William Safire, *Safire’s Political Dictionary*, (Oxford: Oxford University Press, 2008) at 482.

<sup>767</sup> Lauren Franz *et al.*, “Stigma and treatment delay in first-episode psychosis: a grounded theory study”, in *Early Intervention in Psychiatry*, Vol. 4, No. 1, (2010) at 47.

<sup>768</sup> Goffman, *supra* note 12, at 43-42.

<sup>769</sup> Moore, Tangney, & Stuewig, *supra* note 22, at 196

<sup>770</sup> David L. Vogel, Nathaniel G. Wade & Shawn Haake, “Measuring the Self-Stigma Associated With Seeking Psychological Help”, in *Journal of Counseling Psychology*, Vol. 53, No. 3, (2006), at 326 [Vogel, Wade, & Haake].

<sup>771</sup> King *et al.*, *supra* note 607, at 253.

<sup>772</sup> Chui & Cheng, *supra* note 377, at 671.

anticipation.<sup>773</sup>

Feelings of fear are found in behavior, like not wanting to get close to people in order to avoid rejection, as well as not sharing one's criminal past with others, so as not to be a burden.<sup>774</sup> In regards to the histories recounted by my respondents, both of these self-stigmatizing behaviors are found. Bobby's suggestion that his criminal record does not label him "unless someone knows" seems to align with wanting to avoid unpleasant situations. In regards to disclosing his past interaction with the criminal justice system, he explains, "I don't tell people that I have a criminal record. I don't bring it up in conversations like, like ... you know [laughing] ... yeah it's not something I talk about". Barry also exhibits a level of self-stigmatization within his fear of what others might think about him, as he explains that "every now and then guys are joking or whatever, I don't hide, but I won't go into the particulars with any of my close friends, there is just some stuff that some people don't need to know". In regards to fear and not wanting to be a burden, Barry when discussing his criminal record states "I feel that if someone who really didn't know me knew, then that is who I'd be to them". He further explains about disclosing his criminal record that "people I know, no problem; people I don't, I'd rather not tell them or not have them know", confiding in me that I was "probably the only other person that [he] don't know that [he] ever talked to about this". Additionally, in regards to anticipation and fear, within the context of volunteering at his children's school, Barry explains that a prerequisite criminal records check is "the first thing I look for and if it asks then I will not do it". He elaborates:

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.

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<sup>773</sup> Boyd-Ritsher, Otilingam, & Grajales, *supra* note 606, at 7-8.

<sup>774</sup> *Ibid.*

Charles's narrative also speaks to avoidance, anticipation, and not wanting to be a burden. In addition to explaining that he "has no need to meet any new friends unless it happens", he relates the conflict with revealing and retaining control of his social identity directly: "it's a difficult thing, especially, when you're released on parole or on probation and they put conditions on you to not associate with people with a criminal record". I agree, especially when ten percent of all Canadians have a criminal record. Charles confides that "for the most part it's not something that is discussed, so as most people do not see that in me and it isn't until that becomes 'hey this is so and so and this is where he's been'". However, he goes on to say that

it's one of the most awkward things; how do you go about and find out who has a criminal record and whatnot, because of the fact you know what, it's not really something that you want to openly discuss, 'Hey! Buddy! Have you got a criminal record? Because, I can't hang out with you'.

Charles further explains that his criminal record is "not the greatest thing on the first day of a job or meeting somebody". I would again agree, especially as such knowledge socially frames who you are in relation to not just other people but to yourself as well, in that it silences agency and as a result, Charles (like Barry) reveals that,

I try to avoid things where I have to go for criminal records checks and stuff like that because [...] as it's frustrating to go through the process only to know what the outcome will be that no one wants you around, if you're this, or this, or this, or this, you know.

Trevor too, expressively frames his criminal record as something that "haunts the hell out of me". To him, in regards to work incentives (e.g., trips)

I'm like, oh my God please don't let it be a U.S. destination, please, please don't let it be, and you don't even know, until you win, where it's going to be right, so umm, it has limited me there in a couple of scenarios where I would have been going to the U.S. and I had to make an excuse to say I got a family thing I can't go.

Here again (like Barry and Charles), a pattern of avoidance and anticipation is a strategy of vigilance to those who are navigating society fearful of the rejection and liability attached to having a criminal record. This thinking has me, despite undertaking this thesis admitting only to having a criminal record but not any of its particulars.

Feelings of fear are also discussed in relation to avoidance and anticipation when disclosing one's past interaction with the criminal justice system with possible significant others. Bobby admits to not knowing if he would bring it up reasoning out-loud, "if she asked me right, I'd be honest, I would tell her, yeah so you know I did some things, I did a lot of things so yeah, I don't know". Martin seems more practical, if not forthcoming, explaining that "it's not like I tell them in my dating profile". However, he does state that he discloses his criminalization "pretty early in a relationship just because if it was going to be a deal breaker, I'd rather not have invested time and energy into a potential relationship only to have it go sour because of that factor. So I normally disclose on the first or second date". However, his willingness to disclose his criminalization might also be a result of what Stacey calls 'the Google effect', where "individuals criminal records can be found online by anybody who searches their name",<sup>775</sup> for as Martin tells it

the only girl that I didn't disclose it to found out anyways. She did some research online and it was a pretty tough sell getting her to meet me after that, so I could explain it. I told her I would answer any question she had, so yeah, I mean, it's kind of hard for a woman to take you seriously after that.

Martin's 'right to be forgotten' seems improbable, as besides not being a citizen of the European Union, his ability to delist his spent convictions by removing any linked search results to his name is a subjective process dependent upon the severity of his offence,<sup>776</sup> and as Martin

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<sup>775</sup> Stacey, *supra* note 63, at 271.

<sup>776</sup> *Ibid*, at 274.

explains, “I’ve got like twenty-seven charges”.

Barry in regards to his present partner and mother of his children, explains that he was “straight up with her” from the start. Charles however, says that his criminalization is “normally not the first topic of discussion” but does go on to explain that “it is something that needs to be addressed as quickly as possible or otherwise you just end up spinning a web of lies”. Caleb, as well, admits that it is best “never to lie to your significant other” but expresses that he fears being asked by people he dates about his criminalization explaining that, “if they ask me right away I might think they are a police officer, so no, but would I eventually tell them? Of course”.

Timothy, when asked if his criminal record was something he brought up right away, says, after an expulsion of air, “probably not, no”, but does go on to say: “[despite not disclosing] very often, no, no, if... if I know somebody or trust somebody yeah, I guess I’ll tell them”. In my own case, I am married to my high-school sweetheart, a person all too familiar with my poor decision making; however, before we eventually settled down, I never brought up my criminalization with anyone I was intimate with (let alone not intimate with).

As recounted, feelings of fear in relation to disclosure of one’s criminalization are conceivably no more poignant than when interacting with law enforcement. Having a criminal record has pigeon-holed my beliefs about how I am perceived by the police, particularly when my name is accessed through CPIC. This sentiment is shared by Timothy in his suggesting about his criminal record that “if they had of looked it up, they would have definitely changed the way they looked at me, you know what I mean... yep a little more brazen or what not, you know what I mean”. However, in my own understanding of my interactions with the police, I am of the mindset that if I am not at fault in the particular situation for which I am being detained, then what is archived and at the disposal of law enforcement is of no real consequence. Yet the

process, despite maybe not being a fearful one, to me is, like that of Charles and Timothy, an anxious one, filled with the unknown. This unknown Martin suggests

can be kind of scary when you're driving in a car, like I get pulled over, I have cautions on my name and if there are passengers in my car it usually freaks them out as they [the police] wait for multiple cars to show up for backup and sometimes they approach the vehicle with their side-arms out and it's definitely intimidating.

This fear is also an unknown that has Bobby wondering in anticipation when he gets stopped by the police if he is "going to get thrown in handcuffs right now or something".

Charles feels "anxious" when driving his car, explaining that "anxiety arises right away, you're nervous, your hands are... you're just wondering am I going to get pulled over, am I going to get pulled out of the car and, and ... am I going downtown, you know it's not easy". He further expands upon why he feels this way by saying

just [...] because I'm viewed as this person, as the criminal record thing and the perception of the police based on that criminal record can really affect you in a bad way, whereas you can be assaulted, you can be harassed, you can be fucking beaten by these people for no apparent reason, and them get away with it.

To him, "the criminal record thing is a slippery slope, especially when you're dealing with a police officer within an interaction". Trevor too suggests that even in the best interaction there is anxiety as he describes that despite being invited to the Ottawa Police Service Gala, he is

already stressing about it even though I cleared the air with the arresting officers last year [...] but I still have anxiety knowing that I'm going to walk in there again. I'm sure the conversation will be a lot better than last year like the conversation ended well last year but the initial, if he sees me he'll probably come over and shake my hand and say, hey how's it going, but he will know and even though we cleared the air the anxiety is still there for me and the anxiety is still there for my wife now.

Anxiety like fear, as suggested by Vogel, Wade and Haake is a feeling that sustains self-stigmatizing behavior.<sup>777</sup>

Another self-stigmatizing emotional understanding of fear, is supported by Laura Nader, (as well as Carol Sanger, and David Garland), when she suggests that fear is a powerful political tool that, through the inculcation of a broader social fear, allows a narrower individual fear to be produced.<sup>778</sup> She suggests fear advances the perpetual need to have an enemy, or someone to whom this dread can be attached;<sup>779</sup> however, this perceived other will forever be, as Karin Fisher explains, presumed guilty until proven otherwise.<sup>780</sup> Similarly, Goffman suggests, “the stigmatized individual exhibits a tendency to stratify [their] ‘own’ according to the degree to which their stigma is apparent and more obtrusive”.<sup>781</sup> This thinking, is supported not just by me thinking, that irrespective of breaking the law myself, there are worse criminal records (and by extension people) than mine (or me). Barry too exhibits this thinking exclaiming “I never murdered anybody, I did a bit of violence”. Timothy also speaks to this hierarchization, querying so

like what’s a DUI, you know what I mean, like I, said judges, lawyers, doctors, police officers get them, so it’s like ... sure it’s a criminal offence but should that really be tacked on to your criminal history for the rest of your life.

Caleb, as well, explains most emphatically that

everything in this world is replaceable when it’s material, if you do not cause physical harm or mental harm to another human being, you break a window to steal some diapers, to do this, to do that, okay [...] but if you did something heinous again like the diddling of children, a pedophile, a rapist [then no].

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<sup>777</sup> Vogel, Wade & Haake, *supra* note 771, at 332-335.

<sup>778</sup> Laura Nader, “Anthropology of Law, Fear, and the War on Terror”, in *Anthropology Today*, Vol. 33, No. 1 (February, 2017), at 27.

<sup>779</sup> *Ibid.*

<sup>780</sup> Karin Fisher, “The Spy who Wasn’t: Wrongly accused of espionage, a Temple U. physicist fights to reclaim his reputation”, in *The Chronicle of Higher Education*, Vol. 62, No. 18 (January 15, 2016), at A 20.

<sup>781</sup> Goffman, *supra* note 12, at 107.

Rafał Smoczyński proposes “moral panics as atypical and irrational societal reactions”<sup>782</sup> an understanding seen in praxis from the stories told, for despite being (somewhat) similarly situated to those who my respondent’s and I perceive as ‘devils’, we criminalized individuals still bend to social forces (or is it hope) that there are worse people than us. This line of thinking or self-perception is adjacent to the self-stigmatizing experience of being less than a full member of society.<sup>783</sup> However, instead of thinking ourselves as ‘less’, we project our own perceptions of inferiority and unworthiness onto others.<sup>784</sup> Charles articulates this when suggesting that criminal record checks for volunteering should not apply to him, as they

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.

The responses given align with Goffman’s suggestion that those who are stigmatized inculcate some measure of contradiction where they aspire to a level of accepted social identity despite failing to conform.<sup>785</sup>

Additionally, there is another way that fear infiltrates the lives of these criminalized respondents and it concerns the shared custody of their children. My own fear kept me from helping out with finger-painting and tobogganing, but fear can also be used as tool of leverage by others. Martin explains that his physically abusive partner threatened him with his record, sharing that if he phoned the police “she said, no one would believe you [...] I don’t have a

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<sup>782</sup> Rafał Smoczyński, “Mapping New Research Directions in the Sociology of Moral Panic”, in *Studia Socjologiczne*, Vol. 3, (2016), at 10.

<sup>783</sup> Boyd-Ritsher, Otilingam, & Grajales *supra* note 606, at 7-8.

<sup>784</sup> Mike Atkinson *et al.*, “Projection”, in *Psychology: Frontiers and Applications*, 6<sup>th</sup> ed., (Toronto: McGraw-Hill Ryerson, 2017), at G-10.

<sup>785</sup> Goffman, *supra* note 12, at 106.

criminal record, you do, so what are you going to do about it, and I thought about it for a second and I thought holy crap she's right". This interaction left Martin feeling "victimized" and thinking that "it was terrible". As well, in regards to custody and visitation, Charles who is the father of five children, suggests that his criminal record "is always brought up being just another hoop to jump through [... adding] just because you sell drugs doesn't mean you are a bad parent". Bobby too, despite having a child, admits to never really seeing them.

In summation, the narratives of fear, anxiety, and nervousness shared along with the my own similar experiences, suggest a pattern of self-stigmatizing behavior exhibited through a silencing tendency of social withdrawal based on the fear of rejection and the liability of being a burden. Be it a sharp sudden twinge, or a prolonged and diffused dread,<sup>786</sup> having a criminal record is personified in an emotional proclivity towards avoidance and anticipation. The fear of disclosure and the revealing of one's criminalization within everyday interactions, with a present or past significant other, or with law enforcement was a narrative communicated by my respondents.

#### **4.1.2- Shame and Embarrassment**

Shame, is different than guilt, as "guilt is the inner experience of breaking the [social] code, [while] shame is the inner experience of being looked down upon by the social group".<sup>787</sup> Guilt then, "is a painful feeling of regret and responsibility for one's actions, [while] shame is a painful feeling about oneself as a person."<sup>788</sup> Goffman, and Link and Phelan discuss shame as the archetypical emotion in regards to self-stigma, whereas Holly VanScoy suggest, that shame is

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<sup>786</sup> Reevy *et al.*, *supra* note 544, at 265.

<sup>787</sup> Merle Fossum & Marilyn Mason, *Facing Shame: families in recovery* (New York: W.W. Norton & Company, 1996), at vii [Fossum & Mason].

<sup>788</sup> *Ibid* at 5.

“the quintessential emotion”.<sup>789</sup> Drawing upon the work of Alen J. Salerian, she explains that “shame is a complex emotional response that all humans acquire during early development [and is] a normal feeling about ourselves and our behavior, [that is] not necessarily a symptom of an illness or pathology, [as] in many situations, it’s abnormal if we don’t experience it”.<sup>790</sup> For example, embarrassment and shyness “are two forms of shame that seldom cause trouble — unless they’re extreme or long lasting”,<sup>791</sup> much like criminal records are. Shilling concurs, explaining the needed “effects of emotional energy [like] pride, and shame on the binding and unbinding of social relationships”,<sup>792</sup> and John Braithwaite similarly posits that shame can reintegrate individuals in society if used properly in the criminal justice system.<sup>793</sup> However, Braithwaite suggests when shame is used improperly there is a disintegrative propensity that further criminalizes those caught in the process.<sup>794</sup>

With regard to my own criminalization, despite the twenty-five years that has passed since I was found guilty of breaking the law, I am today still shameful and embarrassed of my past. These feelings are reified within me when confounded and confronted with the fearful possibility of having to disclose my criminalization to someone I would prefer not to, and also, when my past interaction with the criminal justice system prevents me from doing something those who are not so marked can. As such, I agree with both Timothy’s statement that a criminal record is “something that you do not want to have”, and Bobby’s proposal that his criminal record is “a reminder of all the bad things he did when he was younger”. In this section, I will investigate how the theme of shame and embarrassment applies to a criminal record in relation to

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<sup>789</sup> Holly VanScoy, “Shame: The Quintessential Emotion”, in *PsychCentral*, online: <<https://psychcentral.com/lib/shame-the-quintessential-emotion/>>.

<sup>790</sup> *Ibid.*

<sup>791</sup> *Ibid.*

<sup>792</sup> Chris Shilling, *supra* note 550, at 11.

<sup>793</sup> John Braithwaite, *Crime, Shame and Reintegration*, (New York: Cambridge University Press, 1989), at 2-4.

<sup>794</sup> *Ibid.*

self-stigma, and will share how the descriptions of my similarly situated research participants align with the applicable research.

As explained in the literature review and the theory sections, personal feelings of embarrassment and shame lead to self-stigmatization.<sup>795</sup> However, these emotions were seldom outright claimed. Still, Barry, Bobby, and Trevor did discuss both shame and embarrassment, as well as Timothy and Bobby when they brought up remorse, and pride, thus allowing me to interpret their responses in relation to my own similar feelings of criminalization. Although embarrassed of my past interaction with the criminal justice system in regards to people finding out, I am more shameful of my criminalization. I have been able to retrospectively interpret my behavior academically under the pretense of edgework which is a criminological theory posited by Robert Garot as the ability to escape the everyday by pushing the limits of what is acceptable (i.e., breaking the law).<sup>796</sup> However, in hindsight, my shame is more rooted in the knowledge that I was greedy and spoiled, wanting things I did not need and because of that, like Barry states “my future is impacted”. Barry says of his criminal past: “for anybody who doesn’t really know who I am it would be embarrassment”, elaborating that it was a “different time, different life, I was a different person”. He informally, like me, places the blame on being “young and dumb” and more formally, unlike me, attributes his past behavior to the environment he grew up in, explaining that he was “a product of my neighborhood, a product of the society where I grew up”. Out of his youth peer-group “eight are in prison for life”, and four others died.

Bobby alternatively, expresses diverging voices regarding his emotional response to his criminalization; however, all speak to self-stigmatization. First, notwithstanding his stoic claim of having no feelings besides the regret of not getting a pardon when he had the opportunity, he

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<sup>795</sup> Boyd-Ritsher, Otilingam, & Grajales *supra* note 606, at 20; & Chui & Cheng, *supra* note 377, at 672

<sup>796</sup> Robert Garot, “Gang-banging as edgework”, in *Dialectical Anthropology*, Vol. 39, No. 2 (2015) at 151-155.

describes his criminal record as “a blemish on my life [being ...] a reminder of all the bad things I did when I was younger”. As well, notwithstanding stating that his criminal record “never really limited him”, and that “it’s not something I am embarrassed of”, he subsequently admits that his past behavior is “not something I am proud of, but I am not embarrassed of it”, and states that his criminalization “was a long time ago” and that he “did a lot of things”. However, Bobby later clarifies that “if I had to sit across from somebody that I did something to, [...] the gentleman or the person I had stolen from, [then] yeah, I would feel ashamed and I would feel guilty and would want to apologize and make amends”. Trevor when asked about feelings of shame and embarrassment in regards to his criminalization, accepts them

yeah-yeah, one hundred-percent ... yeah-yeah, but the shame and embarrassment is not with my buddies, my brother, my sister, my dad, the shame is for the people who, like my stepfather, was a die-hard business guy, who saw so much potential in me and just cannot fathom I did that, that I made that decision, so yes there is definitely shame, yep-yep, for sure.

These narratives of my respondents and myself, are as both Goffman and Cooley suggest,<sup>797</sup> dependent upon interactions with others and reflect a metric of shame and embarrassment. As such, our understanding of ourselves are caught within these connections of self-stigmatization.

Besides feelings of personal shame and embarrassment, another correlation to self-stigmatization is found in altruistic behavior to prevent the transferring of any shame and embarrassment to one’s family and friends.<sup>798</sup> Barry states he wants to avoid burdening these two groups of people with his criminalization; as he says: “close, close friends they know it’s there but I would never go into detail with them”. He also relates a story of being detained for four and a half hours at the American border with his family. He describes that “it was embarrassing in front of my kids”. Barry, for his attempt at a back to school shopping road-trip, got fingerprinted

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<sup>797</sup> Goffman 156, *supra* note 156, at 243; & Cooley, *supra* note 424, at 184.

<sup>798</sup> Boyd-Ritsher, Otilingam, & Grajales *supra* note 606, at 20; & Chui & Cheng, *supra* note 377, at 672.

and his wife threatened with prosecution. It also forced him to admit in front of his three children what he explains as “something they never needed to know and now unfortunately they do”. I too, was denied entry into the United States; however, the only person who witnessed my ten minute bewildering interaction at being turned away from the border for answering questions truthfully was as Goffman suggests a ‘wise’ friend already aware of my criminalization.

Charles as well, despite his children knowing his criminal past, explains that they still struggle: “[They have] a hard time trusting or believing in me that I am not going to fall back into my old ways”. My own children, although younger than Charles’s, unfortunately also know that I have a criminal record. My eldest asks me at least once a month what I got in trouble for, to which I answer that I was silly and broke the law, not wanting, in the shameful and embarrassing tradition of self-stigma, to ever really tell either of them my actual charges. I have; however, promised to divulge the dirty-little-secret someday when they are older. Trevor describes his own strategy regarding his criminalization and his family:

[My wife and I try] to bury that past, but knows someday that we will have to have the conversation with, I have a six-year old and a two-year old right, so we will have to have that conversation, but she’s like how do we even have that conversation ... like daddy went to prison. Daddy. So, so, that is again something that she tries to hide. We don’t ever mention it but she feels probably you know maybe when they’re like eighteen or something that we’ll maybe, I guess we’ll see, we’ll see, if my stuff never comes up, maybe we don’t have that conversation.

Trevor also, when discussing his wife, describes his criminal record as “a negative thing because I don’t want or she does not want anyone knowing, as she deals with a lot of corporate accounts that are higher security, so if they found out they might be pissed off”. He goes as far as suggesting that his criminal record “affects my wife’s future” in relation to her employment. He relates:

she didn't even apply because she knows that umm, the background check is, is... goes back 10 years and involves anyone that's attached to you... husband, spouse, father, mother, siblings, anything. So, she couldn't even apply and it was like a hundred-K plus, plus, plus, plus dream job... and she was actually crying and upset for like a whole month.

The narratives disclosed by Trevor, like Barry, Charles and myself, suggest that besides the fear of our own embarrassment and shame, the corresponding feelings of those we love and care for are of an utmost concern.

Feelings of shame and embarrassment (notwithstanding the applicability to discrimination and alienation) are also reflected in the self-stigmatizing pattern of behavior pointing to an individual understanding themselves like Charles (and Goffman) "as being less than a full member of society".<sup>799</sup> Timothy seems to agree, suggesting that a criminal record was something that can "eat away at your pride, you know what I mean, you can't do this, you can't do that". Trevor as well, describes how his criminalization makes him feel as follows:

less from a husband standpoint in that I can't give my wife a hundred percent of things ... bucket list things, we want to do and having to someday tell our girls all that shit, and having her miss out on a crazy job and all that stuff is where I feel less whole but for me and my potential I know where I will be and it will be making real great money and it is not this company that is holding me back because this company does not require a background check ... I am less of a man having to go with another company where I have to apply for these big director jobs where I can't... I won't.

Trevor's shame and embarrassment seems to stem from not being able to measure up as he again describes pressure from his wife

as a little thing for her is she wants to take the kids to Disney World in the U.S. even though there's a Disney World in Japan and in Europe or wherever, but she wants to go do the Disneyland in the States [...] but she is like I don't know if I will ever be able to take the girls there and it's such a little thing but it kills me.

Having heard Timothy but moreover Trevor's story, I am inclined to agree that the limitations

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<sup>799</sup> Boyd-Ritsher, Otilingam, & Grajales *supra* note 606, at 7.

imposed by my criminalization disgrace me, making me feel like less of a father in the eyes of my children than those in society (i.e., Madison's dad) who can freely vacation to an American Disney magical kingdom.

In regards to shame, despite what was actually said by those interviewed, Peter Bishop *et al.*, suggest that non-verbal communication articulates its own type of information.<sup>800</sup> This non-lexical component of communication or para-language is based on physical features of spoken language, such as facial expressions (e.g., smirks), or gestures (e.g., pointing), while others are rooted in vocal elements (e.g., voiced pauses such as um, and hmm, or intonation, which describes the pitch and volume of a person's speech).<sup>801</sup> Reevy *et al.* posit that signs of embarrassment may include blushing, displaying an embarrassed smile, turning away from observers, covering the mouth, or nervous laughter".<sup>802</sup> I am not a clinical psychologist nor psychologist, and therefore unable to delve further into the psyche of my respondents, but I am however able to say that when Barry was asked to describe how he feels about his criminal record he (like all my respondents) hesitated in his speech patterns: "just more embarrassing than anything... Umm..., I don't know why... it shouldn't be... like I said ... I was a different person..., umm..., different time, different lifetime, it seems like now, umm..., yep". He, like Bobby, Timothy, Caleb, and Trevor, laughed nervously during his interview. Not knowing my respondent's idiosyncrasies limits my ability to gauge their level of discomfort when discussing their criminal record. However, I interpret these signs as being more connected to shame (or nervousness) then pride or neutrality, particularly when presented with the narratives given. Additionally, in regards to what was not said being applicable to shame, none of my

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<sup>800</sup> Peter Bishop *et al.*, *The Art and Practice of Mediation 2nd ed.*, (Toronto: Edmond Montgomery Publications, 2015) at 134.

<sup>801</sup> *Ibid.*

<sup>802</sup> Reevy *et al.*, *supra* note 544, at 225.

respondent's shared the actual crimes for which they had been convicted. Much as I am willing to disclose that I have a criminal record but unwilling to go into the specifics, they too, skirted around their criminalization offering few details, if any.

The narratives provided by my respondents align with the concept of self-stigmatization, as the feelings expressed reflect a pattern of understanding oneself as less than a full member of society, much as Bobby describes himself as being "tarnished" due to internalizing the idea of having a spoiled identity. Be it the awkward embarrassment of accepting that your past actions were wrong or the debilitating feeling of shame associated with being found out and possibly judged for your past dealings with the criminal justice system, there is, from what has been recounted, a certain pervasive toxicity that accompanies these feelings.

#### **4.1.3- Discrimination and Alienation**

Section 15 of *The Canadian Charter of Rights and Freedoms* does not identify criminalization (or stigma) as an analogous or enumerated ground for discrimination. However, while Prince Edward Island and the Yukon Territory recognize that a criminal record can be used as a blanket reason for unfair treatment, a past interaction with the criminal justice system has not been afforded such protection in any other provincial or territorial jurisdiction within Canada, unless a pardon or record suspension has been granted.<sup>803</sup> As Goffman suggests, the ability to conceal one's identity as a criminalized individual is somewhat manageable until disclosure is required, and in Canada criminal record checks are now common if not compulsory when it comes to employment, volunteering, travel, housing, and insurance. Pager proposes everyone who has broken the law is similarly situated in society as they are institutionally branded a particular class of individual where the 'negative credential' associated with having a criminal

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<sup>803</sup> Canadian Center for Diversity and Inclusion, *supra* note 77; & Appendix B.

record represents a unique mechanism of stratification. This hierarchy as Charles explains, has “some good guys out there who do understand people are trying to make change and they applaud you for it, but then there’s others that just want to beat you down”. In this context, this section concerns how experiences of being treated unequally apply to a criminal record in relation to self-stigma, particularly as Kaiser and Miller posit that “being stigmatized is virtually synonymous with being rejected”.<sup>804</sup>

The stories told by my respondents relate discrimination in a paradigm of alienation, much as Goffman did within a pattern of behavior pointing to an individual understanding themselves as having a spoiled identity or as feeling out of place in the world because of their stigmatizing mark. Charles and Bobby both describe their criminal records as “a blemish” on their lives. Charles, goes as far as considering himself different from other people as a result of his criminalization. According to him: “[a criminal record] always makes you feel less-than, you know, and that, that stuff, that’s the biggest problem I think, is not feeling acceptance, you know”. He further relates: “you are not able to do things that normal people can”, and when asked if he felt normal, Charles confided:

[I’m] getting there, [as] some people will go inside and don’t take anything from it. The one thing that I have learned through my time and being incarcerated was that hey, you are accountable for the mistakes that you make in life and that you have to atone for them, so, I think I’ve done my time and now I need to move forward but the biggest problem with that is a criminal record seems to hold you back.

He elaborates: “when it comes to work you are discriminated against because of your criminal record, as people that do not know me may have a preconceived notion because of what they’ve heard about me”.

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<sup>804</sup> Kaiser & Miller, *supra* note 508, at 206.

Martin too, discusses experiences of exclusion when he suggests there is a “whole bias towards having a criminal record”. To him his criminalization is “a major stumbling block” and admits to feeling “stuck” between “two-worlds”, blaming “the whole Justice System in the way it is set up as you continue to wear your punishment long after your sentence is finished”. He senses that those who do not know him but know of his criminalization have “already created a whole story in [their] heads”. Additionally, in regards to alienation, Martin’s criminal record, besides impacting employment, travel and education, occupies his thoughts. He states, that it is “definitely something I think about; at least once a day it crosses my mind”. Being employed in heating, ventilation and air conditioning he explains:

I’ve done jobs for police officers, I’ve done jobs for members of Correctional Services Canada, or jail guards and I knew what they did for a living but they did not know what I did for a living, and I am pretty sure they would have reacted very negatively given the length of my sentence, if they had known that I had a criminal record.

Martin’s experiences in regards to employment reinforce his assumptions about what people think about him. He shares the following:

[Despite having] scored in the top tenth percentile for apprentices, I have been to six or seven interviews where I have been hired each time or about to and anytime a criminal record comes up I get shut down and that’s the end of the interview [...] and I never get a call back.

A ‘why try’ attitude underpins his discussion about travel and further education, as he explains stigma’s controlling nature, in that he “would kind of like to go to the U.S. but with my record for drugs and firearms I cannot travel to the states even though it was a non-violent offense”. Also, in respect to education, Martin thinks that

there is no real point to my finishing my B.A [or] me being a pilot or nurse [as] you can’t even take the course with a criminal record because there’s a co-op afterwards or during the program and if you can’t do the co-op, you can’t pass the course.

He points out the limiting nature of criminal records as “a lot of guys get stuck with menial, minimum wage, low paying jobs”. Reflecting on this triumvirate of discriminatory experiences Martin articulates, it “definitely feels like my efforts to reintegrate into society have been stifled”. Similarly, despite not impacting on my education, since my criminal record effects my ability to travel, I am limited in my ability to participate in my favorite pastime and feel less of a martial artist as I am unable to compete and attend seminars that are held in the United States. Likewise, in regards to employment, like Martin, my criminal record is a ‘stumbling block’ that, despite my current fulfilling domestic role as a stay-at-home-father, does constrain my future opportunities and makes me feel as Charles described: “less-than”.

Caleb too, offers a comparable narrative of feeling that society prejudges who he is, suggesting perhaps that discrimination is a framework around which my respondents structure how they understand themselves. In regards to employment he has the following to say about his criminalization: “[it] just feels like it’s an anchor that weighs me down when I want to go out to get a job”. He perceives he is always being thought “a suspect no matter what” and acknowledges to feeling “discriminated against for sure”. However, to him, in regards to interactions with law enforcement, rather than fear, Caleb feels he is always a suspect:

It just makes me feel like a suspect when they say ‘Do you know why I pulled you over?’ and you weren’t speeding. I can’t answer that question because if I do I’m just walking right into a trap. [...] Do you know what I mean, because when you pulled up my license plate and saw who I was you decided to pull me over just because you felt like it because you know that I used to be a bad person when I was young.

As well, in the context of employment, Caleb understands that because of his criminal record that he will always be discriminated against, clarifying:

it means it is going to stop me from getting a really-really high-paying job, it's going to stop me from advancing in life without getting a diploma, a piece of paper and even if I do get that piece of paper there are a lot of places that are going to automatically turn me down

He further elaborates:

If I want to get a job where I make the money that I make right now, if I don't know the person that owns the company, it's never going to happen. I have been shut down more than enough times; it puts you at the bottom of the bottom of the bottom of the barrel and automatically somebody even if they are not nearly as qualified, doesn't have the same amount of experience, don't even come close to having the same knowledge that you have, they will get the job before you just because they do not have a criminal record. And it is proof in the pudding, you can ask a million people out there that have criminal records they will tell you the same thing.

In regards to this unequal treatment Caleb suggests the following:

The main thing is the system, they need to fix it badly. It's imperative that someone takes a look at this [...] especially take someone like a car thief, if he has good people skills, that guy will sell any car on the planet because he knows it through and through, and can tell somebody who's buying a car better than anybody else could probably, as good as the manufacturer can, if not better, because he probably has slick people skills as well. So to be discriminated against, and him not being able to get into that industry because he is a car thief is utterly ridiculous.

Timothy, as well, although somewhat noncommittally, admits to feeling discriminated against stating: "Quite possibly, be it job-wise and what not". However, his narrative does speak to an identity that is spoiled as he describes his criminalization as something "you definitely don't want" in that "it's something that sticks with you for long, like it's a lifetime, right". Trevor, too seems alienated by his criminalization, as he has what he refers to as "such a massive shady skeleton in the closet". An understanding of himself that is perhaps fostered by being accosted at The Ottawa Police Service Gala and asked if he was "here with good intentions". A question that was not asked every single guest but one fortunately forced upon him away from the 'unwise-normal' colleagues of his wife that he was attending with. Also explained to him by

his past arresting officer, at this impromptu sidebar, was that “less than 1% of the people that we bust actually make it out and never look back right and so if you are here on good intentions that’s great”. However, despite this special approval, Trevor explains:

People have forgave and forgotten but then there’s also people that will never and have never. And because of the people that don’t forgive me, like they will pretend, they will smile, whatever, but I know that there is no forgiving.

He seems to understand that until he gets “a pardon or whatever it is called”, he will forever be considered different by himself and in the eyes of certain people that matter to him.

I myself, besides not living in the Yukon or Prince Edward Island (where the sharp corners of having a criminal record are somewhat rounded), do not have a pardon, nor a record suspension, much like every one of my respondents. My not submitting my criminal records check to my children’s preschool was, at least partially due to the feelings of persecution I felt after going through the process of applying for it. I thought that those involved, be it the person at the counter, the fingerprint technician, or those in the waiting room, saw me as someone, much as Charles explains, “painted with a certain brush”. It felt like they perceived me as a criminal; not as someone who was, like them, just trying to participate and do my part in society. Furthermore, the possibility of being screened out of certain employment opportunities before even having the opportunity to present myself based on my present merits rather than my ancient past, also categorized me as something distinctly different, making me feel, like Martin mentions “victimized”. Particularly because, as Kemi Anazodo, Christopher Chan and Rose Ricciardelli propose, “gainful employment, in essence, provides the foundational ‘building block’ that former prisoners require to transition successfully into society post-release”.<sup>805</sup>

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<sup>805</sup> Kemi S. Anazodo, Christopher Chan & Rose Ricciardelli, in Rose Ricciardelli & Adrienne M.F. Peteres eds., *After Prison: Navigating Employment and Reintegration*, (Waterloo, ON: Wilfrid Laurier Press, 2017), at 35 [Anazodo, Chan and Ricciardelli].

Also, and interestingly, the backdrop of discriminatory experiences that lead to alienation can be found within the narratives of Charles, Martin, Caleb, and Trevor when they discuss instances of feeling acceptance. Goffman, explains that the politics of identity between in- and out-groups leaves those who are stigmatized lost and alone,<sup>806</sup> and this is particularly the case when people are marked by their criminal records, as this designation “looms large, creating a shameful gap between virtual and actual social identity”.<sup>807</sup> As such, the criminalized find shelter from their exclusion with their ‘own’ (and also the ‘wise’) in order to be at ease with who they think themselves to be.<sup>808</sup> This is seen in participants discussing with whom they feel most comfortable.

Charles explains: “The only people that accept me [are] people with criminal records”, clarifying about his reintegration in society that he “believe[s] everybody deserves a second chance and an opportunity of moving on and if you look at them constantly as they’re criminals and things like that they never get a chance and they just stay in that world”. He frames an understanding of difference and discrimination, explaining: “Hey, if you don’t want me then I will stay in the group that I’m in”. Similarly, Martin relates his discriminatory experiences:

I question the whole system, as it kind of punishes people who are trying to move forward. It punishes people who are trying to do the right thing and do what is considered a pro-social decision, and you know, trying to get their life back together, because I’m only judged for this criminal record when I stay on the prosocial side of things, and I reintegrate back into society, and I get a job and I apply for security clearance, or I go for places where I am going to need a criminal record or background check: that’s where it hinders me. It wouldn’t be a hindrance if I stayed in a pro-criminal lifestyle where that criminal record in some ways is a bonus: it serves as your credentials. So it’s almost like I’m being encouraged to continue on in a criminal life rather than reintegrate in society and live a pro-social life.

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<sup>806</sup> Goffman, *supra* note 12, at 123.

<sup>807</sup> *Ibid.*, at 123-127.

<sup>808</sup> *Ibid.*, at 52.

Caleb, however, does not discuss finding solace from discriminatory treatment in those who suffer the same deficit of criminalization, but instead finds support in the ‘wise’ who know him for who he truly is. He discloses the futility of getting “a job that my boss isn’t my close friend or somebody’s dad, or someone who knows me”. He clarifies:

All the people that I work for, are all my friends. [...] So I work for friends companies. So like the last job I had before this one, right now, I was doing home renovations for a buddy’s company. Now I do sales for another buddy’s company. So it doesn’t matter because they know me but when I have to try to apply for other jobs that I easily should have gotten, like car sales, the only thing that stopped me literally, interviews went well, everything went well, until they looked at the paper and see that I have a criminal record [Caleb making a popping noise]... see you.

As well, Trevor describes his employment as being the result of his boss disregarding his criminal record as a favour to him. He states: “The owner, he was pro-pot, fighting that all the time. I don’t know... that is his personal politics and whatnot he doesn’t give a crap but he does like me”. As well, he explains that outside of work, his circle of friends is limited to that of his family, explaining:

I say life is kind of boring but boring is good because... boring means... boring means... boring means... just like we’re focusing on the kids, our schedules are crazy packed with extracurriculars for our girls ... so it’s running all the time and our time is for our girls... so we get our excitement from seeing the smiles on our girls and doing all that stuff. So when I say it’s boring it’s not B-O-R-I-N-G, it’s just I don’t really see friends, I don’t really go out and do anything so I would say it’s more tame than boring.

Charles, Martin, Caleb, and Trevor finding respite in the company of other criminalized or trusted individuals illuminates how discriminatory experiences support self-stigmatizing behaviour. Goffman (in a gendered way) posits:

The stigmatized individual tends to hold the same beliefs about identity that we do; this is a pivotal fact. His deepest feelings about what he is may be his sense of being a ‘normal person’, a human being like anyone else, a person, therefore, who deserves a fair chance and a fair break. [...] Yet he may perceive, usually quite correctly, that whatever others profess, they do not really ‘accept’ him and are not ready to make contact with him on ‘equal grounds’. Further, the standards he has incorporated from the wider society equip him to be intimately alive to what others see as his failing, inevitably causing him, if only for moments, to agree that he does indeed fall short of what he really ought to be.<sup>809</sup>

In my case, I will talk to anyone if I have too; however, sharing my criminal past is not the go-to conversation starter. Leaning towards the anti-establishmentarian side of the social spectrum leaves me being cordial with other similarly situated stigmatized individuals, nonetheless, the few friends that I do have are trusted ones, ‘wise’ to my criminalization, as I agree, like Charles and Timothy suggest, that “trust is earned”.

Although, also applicable to agency, the narratives given by my respondents concerning the Canadian government’s policy on getting a records suspension (formerly known as a pardon) is another way that societies’ discriminatory predilections are felt by those who have a criminal record. Martin characterizes his criminal record as being “on a very basic level [...] a list of all past convictions that are not yet pardoned or suspended”. This text-book understanding, brings to light how easily people are differentiated. Samantha McAleese writes, there is “a two-tiered system in place for people who want (and need) their criminal record sealed”.<sup>810</sup> One is reserved for those who can afford it and navigate the system, and another exists for those who cannot, as “lengthy wait-times, [...] strict eligibility, [and ...] the \$631 application fee is enough to deter many from applying”.<sup>811</sup> Barry’s narrative regarding why he has not yet got a records suspension

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<sup>809</sup> *Ibid.*, at 7.

<sup>810</sup> Samantha McAleese, “McAleese: Here's why Canada needs more automatic pardons for crimes”, in *Ottawa Citizen* (25, September, 2017) online: < <https://ottawacitizen.com/opinion/columnists/mcaleese-heres-why-canada-needs-more-automatic-pardons-for-crimes>>.

<sup>811</sup> *Ibid.*

supports this as he suggests “I would, it’s a bit of money, it’s not a big deal but you know when the kids are young, money always has to go someplace else you know, someday I hope to, yep”.

McAleese elaborates on the discriminatory nature of criminal records suspensions by suggesting that “there are often other costs associated with the application process that can increase the price to around \$1,000”.<sup>812</sup> Timothy attests to this as he relates his feelings about his own experience of getting a records suspension explaining:

It’s like \$735, then you do \$85 for the fingerprints, then you do a \$50 thing with the Ottawa Police, and then they send you a package back and you have to fill out all the rest of this information, and then give the government \$688 dollars to process [...] so yeah it’s like \$1,200.

As Paula Maella suggests, this once nominal governmental fee of a pardon has been replaced by a substantial tariff that not only discriminates but has created an industry that takes advantage of the criminalization of those less advantaged in society.<sup>813</sup> I myself, notwithstanding my relative affluence, can attest that not getting a cheaper pardon when I could have, or a more expensive one now, has left me feeling deep down that I am different. However, despite their freeing potential, I, like ninety-percent of Canadians who could,<sup>814</sup> am loathe to get one.

My own experiences, as well as the narratives of my respondents, confirm as Link and Phelan propose, that discriminatory experiences are a key element in self-stigmatization, as individuals are besides feeling alienated, are exploited, controlled and excluded as well.<sup>815</sup> This is expressed by my respondent’s in a pattern of being singled out and prevented from employment, travel, educational opportunities, and full-integration to society. There is an understanding by criminalized individuals that they are different since they are perceived to be

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<sup>812</sup> *Ibid.*

<sup>813</sup> Paula Maella, “The New Cost of Criminal Pardons” in *Behind the Numbers*, online: <<http://behindthenumbers.ca/2011/08/16/the-new-cost-of-criminal-pardons/>>.

<sup>814</sup> Ruddell & Winfree, Jr., *supra* note 355, at 262.

<sup>815</sup> Link & Phelan: 2014, *supra* note 462, at 24.

different, and because of this they deserve to be treated differently. People who suffer from stigma's power are kept 'down', as it enables the domination of others, kept 'in', as social norms frame who we/they are, and kept 'away', as society rejects those who are thought different.<sup>816</sup> However, for those marked with a criminal record and without the supposed absolution of a records suspension, solace from the alienation caused by discrimination can often be found in a network of empathetic compatriots.

### **Sadness**

Stuart Walton posits that if the English language was to truly reflect the wealth of human experience, we would have as many words for sadness as the Inuit have for snow.<sup>817</sup> However, besides sadness and unhappiness to describe the emotion that needs no "external stimuli to render its lugubrious presence known",<sup>818</sup> cheerless, crestfallen, dejected, doleful, down, gloomy, glum, grief, melancholy, mournful, miserable, sombre, and soulful are some synonyms that offer the same affectual predisposition that Walton suggests, would aid the lexicon of sadness.<sup>819</sup> Furthermore, *The Encyclopedia of Emotion* states that "sadness is an emotional reaction to perceived loss".<sup>820</sup> In relation to the self-stigma of criminalization, the forfeiture of one's self-esteem (i.e., the positive or negative evaluations of the self, as in how we feel) and self-efficacy (i.e., how well one can execute courses of action required to deal with prospective situations) is apparent.<sup>821</sup> Klaus Sherer's cross-cultural study of emotions further develops the understanding of sadness in regards to criminal records as he frames the emotion in relation to situations that are unpleasant, unfair, conflicted with personal goals, and where the losses are thought

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<sup>816</sup> *Ibid.*, at 25.

<sup>817</sup> Stuart Walton, *A Natural History of Human Emotions* (New York: Grove Press, 2006), at 127 [Walton].

<sup>818</sup> *Ibid.*

<sup>819</sup> "Sad", in *Meriam Webster Thesaurus*, online: <<https://www.merriam-webster.com/thesaurus/sad>>.

<sup>820</sup> Reevy *et al.*, *supra* note 544, at 507.

<sup>821</sup> Douglas N. Evans, Emily Pelletier, & Jason Szkola, "Education in Prison and the Self-Stigma: Empowerment Continuum" in *Crime and Delinquency*, Vol. 1, No. 26 (June, 25, 2017), at 256.

irrevocable.<sup>822</sup> This section concerns how experiences of sadness apply to having a criminal record and will relate, how both mine and the narratives of my similarly situated research participants align with the academic thinking in relation to self-stigma, particularly Jonathon Larson and Patrick Corrigan's description of self-stigma from within a pattern of sadness, disgust and depression.<sup>823</sup>

When I think about having a criminal record, I feel like Bobby, some regret. However, I can articulate further that I am truly saddened by it. As suggested by Reevy *et al.*, there is a level of hopelessness felt,<sup>824</sup> not just in regards to the unhappiness of missing out on sharing certain moments in my children's early years, but also in not thinking my own government has faith in me as a person. Charles speaks to sadness in regards to his family when he states that, besides being "dejected", his criminalization has affected his children: "It makes me feel bad that my children have missed out on things that they should have had from their father". Martin when admitting to being "disillusioned" and "disenchanted" discusses sadness in general when potentially not being trusted by the government, and explains in the language of self-stigmatization that his criminal record holds him back, as "it makes me feel kind of sad, just heartbroken that I have put so much effort into moving forward and that there are these roadblocks that no matter how much effort I put into them I can't get through them". He also relates a level of hopelessness in regards to being a father as

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<sup>822</sup> Klaus M. Scherer, "The role of culture in emotion-antecedent appraisal" in *Journal of Personality and Social Psychology*, Vol. 73, no. 5, (1997), at 917 [Scherer: 1997].

<sup>823</sup> Jonathon E. Larson & Patrick W. Corrigan, "Psychotherapy for Self-Stigma among Rural Clients" in *Journal of Clinical Psychology*, Vol. 66, No. 5, (2010), at 532-534 [Larson & Corrigan: Psychotherapy for Self-Stigma].

<sup>824</sup> Reevy *et al.*, *supra* note 544, at 507.

It makes me feel pretty sad, because all I am trying to do is be a good dad and see my son and I do not think that's really too much to ask. But I'm worried that my record is going to play a factor. Even though I would like to state for the record to that my charges are... well I have served one federal sentence, I have never been convicted of a violent offense or a sex based offense. Really in my mind, there is no reason why I should not be there for my son.

Like Charles and Martin, I feel sadness in relation to my criminal record, particularly now, as I search for employment befitting my level of education. Bobby speaks to this directly saying

that's pretty harsh man, cause somebody like me who hasn't been in any trouble for a long time and has no intention of ever being in trouble again, that would be pretty crappy if I had to, if I needed that out of the way to get a job.

Within his framing are sentiments that unfortunately apply to me, as a qualification needed for most of the jobs I am interested in is passing a criminal records check, which as a criminalized individual, I cannot. Likewise, Timothy in his own *blasé* way, frames his understanding of his criminal record as “kind of crappy” and that “it's kind of a bummer” as there are “certain things you can't do right [...] certain places in the States that you would sort of like to go”. Trevor also relates sadness when he suggests that his criminal record has “devastated” him. As well, sadness is found in his stating: “So my feelings about my criminal record are disappointment in myself, like I think about it a fair amount”. To him, there is “huge regret yeah, huge regret”. He relates the following in regards to those he respected most: “The trust is gone and it will never come back. Like we still have a good relationship but it's the trust thing that's gone and that...that hurts”. Additionally, Trevor suggests that his criminalization is a matter of “regret ... and remorse”, feelings that are again synonymous with sadness and self-stigma. However, perhaps Martin's feelings emulate my own most closely when he suggests, from his idea of sadness, that his criminalization is “a real kick in the teeth”.

My respondent's narratives around their criminalization and my own experiences of having a criminal record support the notion that feelings of disappointment in one's own

discredited situation, be they expressed as ‘sadness’, ‘dejection’, ‘devastation’, ‘disillusionment’, ‘disenchantment’, ‘regret’, ‘remorse’, ‘feeling crappy’, ‘hard done by’, or ‘kicked in the teeth’, are all similar sentiments exemplifying a pattern of self-stigma. This appears to be a self-fulfilling, self-stigmatizing prophecy, as sadness leads to more sadness, and as a result the reification of self-stigma.

#### 4.1.4- Anger

Drawing on *Black’s Law Dictionary*, where anger is defined as “a strong passion of the mind excited by real or supposed injuries”,<sup>825</sup> and on Walton’s suggestion that “when fear and intimidation are felt persistently, they may turn to anger”,<sup>826</sup> I propose that one such real injury is found in the harm caused by the institutionalized stigmatization associated with criminal records. Therefore, as Larson and Corrigan acknowledge a correlation to the self-stigmatizing nature of anger in their research,<sup>827</sup> this section explores how feelings of anger stem from criminalization.

Reevy *et al.* posit that “definitions of anger vary and have different foci”,<sup>828</sup> an emphasis that Klaus Scherer advances from a cross-cultural exploration of the most common causes of anger, finding that people most often feel angry in situations that are unpleasant, unfair, and have external causation,<sup>829</sup> much like the constraints and effects associated with having a criminal record. In this regard, Barry, although self-identifying as not being emotional, does discuss strong angry feelings related to his criminalization. He explains: “I mean the border crossing was anger, yeah, that was not enjoyable by any stretch (again chuckling) yeah, anger I guess with that border crossing incident”. Timothy, related similar feelings when queried about having his

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<sup>825</sup> Henry Campbell Black, *Black’s Law Dictionary, revised fourth edition*, (St. Paul, MN: West Publishing Co., 1968), at 113.

<sup>826</sup> Walton, *supra* note 820, at 45.

<sup>827</sup> Larson & Corrigan: Psychotherapy for Self-Stigma, *supra* note 825, at 524, 525, & 529.

<sup>828</sup> Reevy *et al.*, *supra* note 544, at 62.

<sup>829</sup> Scherer: 1997, *supra* note 825, at 904.

pardon rescinded leaving him once again with a criminal record. He uncharacteristically expressed more than his normal non-commitment to emotion explaining

I was not a happy camper then, nope. Pissed off, angry, wanted to choke somebody. Oh-yeah, it was definitely not a good situation, especially after having one that you would think would last a lifetime [...] Like what's a DUI you know what I mean, like I said judges, lawyers, doctors, police officers get it so it's like, sure it's a criminal offence but should that really be tacked on too, you know, to your criminal history for the rest of your life.

However, after such knee jerk reactions have passed, I unlike Timothy with his professed stoicism, am left feeling much as Martin and Charles do, "frustrated". Like Martin, Charles, Bobby, and Caleb, I too "question the whole system, as it kind of punishes people who are trying to move forward; it punishes people who are trying to do the right thing". Aligned with this thinking, and in a functional way, Carolyn Saarni, *et al.* posit that anger, besides being related to self-defense, concerns the overcoming of obstacles that stand in the way of reaching a goal.<sup>830</sup> Charles also seems to ascribe to this understanding, as he explains his criminalization as "a bitter pill to swallow" that makes him feel:

Like I said, dejected but eventually sometimes those feelings of dejection turn to anger because it's just like I keep trying to do the right thing but I'm not getting acknowledgement for it. When does this fucking go away, and with what they have done now with pardons and stuff, you know, basically abolishing a pardon, you know, what, for the rest of my life I'm never, I am not going down to the States, Japan, Australia, a couple other countries. But for the most part I know I can travel the world, so that's you know, a good thing but again it's just frustrating.

Caleb also is somewhat upset and irritated about his criminalization, explaining: "The fact that he is discriminating against me because I have a record, yeah it pisses me right off", and by blatantly stating: "Yes, it makes me feel angry and frustrated".

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<sup>830</sup> Carolyn Saarni, *et al.*, "Emotional Development: Action, Communication, and Understanding", in Richard M Lerner & William Damon, eds., *Handbook of child psychology: Vol. 6*, (Hoboken, NJ: John Wiley, 2006), at 227.

In closing, it matters not that anger is defined from an affective or functionalist viewpoint,<sup>831</sup> what does, is the understanding that this emotion

is typically a response to a specific stimulus, whether real or imagined— a threat, an unpleasant or annoying situation, an unfair situation, and so forth [and that] most theorists agree that anger is associated with a compulsion to respond to whatever caused it.<sup>832</sup>

This thinking is supported by the statements provided by my respondents who have a criminal record and by my own experiences of criminalization. Being prevented from doing what people in society without a criminal record can do instills feelings of anger and frustration that agrees with an inculcation of self-stigma. However, despite the various ways my respondents described their anger, besides Barry, and perhaps Timothy, there were no vehement expressions of raw emotion (i.e., raising a voice, banging a table, wagging a finger), much as was not also conveyed in regards to the other emotions already discussed (i.e., fear, anxiety, shame, embarrassment, discrimination, alienation, and sadness).

#### **4.1.5- Agency**

For my purposes, agency is the capacity of an individual to act independently and make their own unrestricted choices, which Pamela Hardin suggests is located somewhere between absolute free will and being a discursive marionette.<sup>833</sup> To her, individual narratives are to be embraced, but with a caveat that they are “nested within a backdrop of broader social and cultural understandings of who we are and how we come to understand our world”.<sup>834</sup> Criminalization as a result of having a criminal record is one such discourse and as my respondents have recounted, it can instil in a person a self-stigmatizing narrative where awareness, agreement and application of

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<sup>831</sup> Reevy *et al.*, *supra* note 544, at 62.

<sup>832</sup> *Ibid.*

<sup>833</sup> Pamela K. Hardin, “Theory and language: locating agency between free will and discursive marionettes” in *Nursing Inquiry*, Vol. 8, (2001), at 11.

<sup>834</sup> *Ibid.*

negative stereotypes caused by having a criminal record,<sup>835</sup> allows present feelings and decisions in society to be dependent on one's past interaction with the criminal justice system. Writer James Tiptree Jr. (a.k.a., Alice Sheldon and Raccoona Sheldon),<sup>836</sup> frames it well explaining that in life we live by ones and twos in the chinks of a world-machine that is not entirely ours.<sup>837</sup> Canada however, is not a future dystopia; albeit, it is a country presently willing to deprive and oppress those marked by a past interaction with the criminal justice system. However, like Goffman and Lebel, Herman posits, stigmatized people are not entirely passive individuals but negotiators who play an active role in shaping their own social outcomes.<sup>838</sup> As such, Martin, Barry, Charles, Bobby, Timothy, Caleb, Trevor (and myself) are not entirely powerless victims but instead have some control. Therefore, the answers given by them, in addition to bringing to light how people with criminal records feel, also demonstrate how they live.

In regards to agency, as discussed, criminal records seem to have direct implications for those wanting to volunteer and travel, but as Caleb states in a very Goffman-esque manner, "it all depends on where you go, who you're talking to, and what you're trying to do". However, criminal records may have the most impact on one's occupation, as every story told by my respondents discussed the constraining effects associated with one's criminalization on their employment and their life chances around being so labeled. Spencer proposes that besides stigma there are various hindrances to finding work for a convict.<sup>839</sup> This is unfortunate for those with

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<sup>835</sup> *Ibid.*

<sup>836</sup> Brit Mandelo, "Where to Start with the Works of James Tiptree, Jr." in *Tor.Com*, online: <<https://www.tor.com/2015/08/18/where-to-start-with-the-works-of-james-tiptree-jr/>>.

<sup>837</sup> James Tiptree, Jr., "The Women Men Don't See", in *The Magazine of Fantasy and Science Fiction*, Vol. 45, No. 6, (1973), online: <[http://valerie.debill.org/Hosting/The\\_Women\\_Men\\_Dont\\_See.pdf](http://valerie.debill.org/Hosting/The_Women_Men_Dont_See.pdf)>.

<sup>838</sup> Nancy J. Herman, "Return to Sender: Reintegrative stigma-management strategies of ex-psychiatric patients", in *Journal of Contemporary Ethnography*, Vol. 22, No. 3 (1993), at 324.

<sup>839</sup> Dale Spencer, "'Between a Rock and a Hard Place': How Being a 'Convict' Hinders Finding Work in the Neo-Liberal, Late-Capitalist Economy", in Rose Ricciardelli & Adrienne M.F. Peteres eds., *After Prison: Navigating Employment and Reintegration*, (Waterloo, ON: Wilfrid Laurier Press, 2017), at 223.

criminal records, as finding ‘gainful employment’ like Anazodo, Chan and Ricciardelli posit, is “a means to sustain a lifestyle in free society, [and] is a central source of identity [as] it can be seen as a positive way for individuals to contribute to society and develop a sense of purpose and meaning in the world”.<sup>840</sup> Criminalization suggests that once labeled one is then negated.

Nevertheless, Barry, when asked about his criminalization, states “I can’t say that it like defines who I am but [...] the actual piece of paper that says... I don’t think of it a lot anymore. I used to but anymore, I try not to, umm..., unless it comes up”. However, aligning with modified labelling theory he further explains his freedom and autonomy in regards to his criminal record:

It does not affect me for fortunately I picked a path of a job that it doesn’t really matter. I have squeaked through and I have never been asked the question to tell you the truth. [...] Previous times, when I first cleaned up my act, I just lied. I always said no [...] if worse comes to worse and they find out, you don’t have a job anymore but at least you get the job.

As such, Barry, despite not being entirely negated as a person by his criminalization, understands the regulating effects of being so categorised, as he states:

It limits me in some ways but I try not to let it, I guess. Umm..., no... I will actually use the word lucky again, where the path I have chosen has kept me. Like I did not try to go be a police officer, or corrections officer, or something you know, where it would be impacting on me. The field of work I chose seems to have allowed me to glide through so far, and I’m sure for the rest of my life I will, even if I did not get it expunged.

In my experience, I am no longer feeling as lucky as Barry. My ability to glide through life with a criminal record seems limited as my hopes to find gainful employment in my field of study, will soon expose me to how Bobby insightfully juxtaposes the restrictive effect of our shared criminalization. About himself, he states:

The unfortunate part of doing all those things I did, I got a criminal record. So, well, whatever, like it does not affect my life at all, [...] I didn’t start working until like eleven years ago, so I mean, the job that I went into didn’t require me to have a clean slate.

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<sup>840</sup> Anazodo, Chan and Ricciardelli, *supra* note 808, at 35.

Conversely, addressing my situation in relation to his, he suggests:

I don't know, if maybe I was in a university course like you, getting a master's and I was going to go into a profession, like law, like you're saying, then you're going to be working in the government and you're going to need security ... the passes and this and that, then okay I get it, but I'm a bricklayer, I work with stone all day, I'm outside, I mean it's my profession; it's what I will be doing.

Bobby's observation has me again second guessing my own chances, not just for gainful but moreover meaningful employment being painted with the invisible stripes that I have.

The capacity to act independently and make unrestricted choices, no matter how diminished one is by their criminalization; however, might still be possible, as many of the narratives given explain the self-stigmatization of a criminal record as an incubator of empathetic nepotism and entrepreneurial spirit. Barry tells us

I am not like a person who jumps from one place to another all the time, so umm..., I lied to my first place, the second place was basically all my managers went to a new place and towed me with them so I never got asked, and umm..., [...] the person I work for now has been a friend of mine for 13 years, he is aware and that's about it.

Timothy echoes Barry's earlier situation stating

I was just lucky enough that the company that I work for now is the same company that I work for before when I had the pardon and they still had a record of me doing the, umm..., security clearance with PWGSC, so I just had to, when I started re-working for them, they were able to do the interview type of thing otherwise if I would have applied straight to get that security clearance I would have probably been done and denied.

Caleb too, as already explained, posits like Barry and Timothy, the helpful convenience of knowing the person for whom you work. In my own regard, my networking skills as a criminalized individual are lacking, which is perhaps no one's fault but my own. However, in the spirit of the research that has been presented, I admit that besides avoiding things like making friends and meaningful connections with other people in society and thinking myself not worthy (if not different), my criminalization has prevented me from pursuing certain life goals.

Regarding a future career path, I will not be able to lie about my criminalization like Barry and Goffman suggest, and the capacity of my own agency to find work might be best filled by following the self-employment example of Charles and Martin. However, this path too seems fraught with limitations. As Charles suggests:

a criminal record affects any kind of progress with business, umm..., right now even with the legalization of marijuana umm..., it prevents you from proceeding with any kind of business ventures in it you are limited and the things that you have to go through... the hoops that you have to jump through in order to obtain any kind of licensing with a criminal record is much more different than with somebody without, so a criminal record is not a good thing for me.

Similarly, Martin explains:

I'm just trying to be a dad, you know be a father, be a business owner, be a productive member of society and there's just roadblocks on each one of those things [...] I run my own company now and all I can do is residential because I can't get in the commercial sector, so there is definitely that glass ceiling there because I need a background check to work in the commercial sector.

Martin's criminalization, as discussed, is a 'stumbling block'. According to him "anytime a criminal record comes up I get shut down and that's the end of the interview". Both Charles and Martin, in a similar manner as Ispa-Landa and Loeffler, suggest that professional organizations act as gate-keepers preventing those who have criminal records from employment opportunities. I too feel this way, as every interesting job posting on indeed.com or GCjobs<sup>841</sup> has as a prerequisite: the ability to pass a security screening that involves a criminal record check.

Spencer suggests that the feelings shared by both my respondents narratives and my own align with how "criminalized subjects express themselves".<sup>842</sup> As such, the spectrum of emotion described (e.g., fear, anxiety, shame, embarrassment, discrimination, alienation, sadness, and anger) besides being demonstrative of self-stigma, has, as explained by Corrigan and Watson,

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<sup>841</sup> Government of Canada Jobs, online: <<https://emploisfp-psjobs.cfp-psc.gc.ca>>.

<sup>842</sup> Dale Spencer, "Cultural Criminology: An Invitation... to What?", in *Critical Criminology*, Vol. 19, No. 3 (May 2010), at 205.

“led many persons to not pursuing life opportunities for themselves”.<sup>843</sup> Despite being a fictionalized story, as a literary and cultural artifact, Nathaniel Hawthorne in *The Scarlet Letter* writes that “no [one] for any considerable period, can wear one face to [them]self and another to the multitude, without finally getting bewildered as to which may be the true”.<sup>844</sup> As suggested by my respondents, the only way possible to reclaim who they should be to themselves and in society may be through obtaining a record suspension. Speaking from my own experience, I feel regret like Bobby expresses: “I wish I would have had it pardoned when I had the opportunity. So, yeah that’s about the only thing I feel about it is that I should have jumped on that opportunity when I had it”. Like him, this extra-step to regain my apparent normalcy was not something my younger self cared about or understood, and as such, from the familiar position Bobby advances, by saying “yeah, I pretty much had the papers handed to me and they said they were going to pay, so all I had to do was fill it out and they would have did the rest,” I also, never got one when it would have been relatively easy. Although today, as I thought a long time ago, and much as Charles does, I perceive a record suspension as an extraneous hoop to jump through. Nevertheless, I do have a sense that a record suspension has the potential to conclude any self-stigmatization created by my criminalization. However, Barry cautions that “unfortunately when it comes to jobs and getting clearance a pardon means nothing; essentially, you are never really pardoned, only maybe to the general public, you are never pardoned to the government”. Besides the temporary nature of a records suspension, this understanding pertains to Martin and Charles particularly, as the frequency and severity of their convictions prevent them from ever being eligible for one. Barry, however, regardless of his understanding of the

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<sup>843</sup> Patrick W. Corrigan & Amy C. Watson, “Understanding the impact of stigma on people with mental illness”, in *World Psychiatry*, Vol. 1, No. 1 (Feb, 2002), at 16.

<sup>844</sup> Nathaniel Hawthorne, *The Scarlet Letter* (New York: Signet Publishing, 2015 [1850]), at 89.

nature of the record suspension process, still sees the allure of such transitory absolution, explaining “someday I hope to, yep”.

Timothy as well, “definitely” wants a records suspension, explaining its necessity in regards to his criminalization: “so I don’t have to go through that ever again anymore”. Bobby too, from within a position of reflection confides:

Yeah, I should go get the pardon (laughing) [...] Yeah, yeah that’s the way I’m feeling about it right, right now my feeling, yeah I should go and get it done. For what reason, I don’t know, but this conversation seems to have a little bit of something to do with it, So you know, maybe it’s like this little push you know, ‘hey, go get that done’.

However, Bobby’s revitalized need to get a records suspension, like the similar want expressed by all my respondents, is in my opinion similar to Kelsey Amos’s idea of a futurism where narratives told are filled with the hope of a possible future that is more convenient than one’s own past or present.<sup>845</sup> To them, it matters not that they will someday get a records suspension; what matters most is that they think someday they will, and that is enough to them. This thinking is true for me, as I too have always had hope in my own perceived future where my criminal record would not be a burden; however, the suspension of disbelief that was me someday getting a records suspension, now seems a present reality. Trevor, like Bobby, understands the restorative nature of the process or “whatever it’s called”, as he suggests that getting one would be “amazing absolutely amazing”. He further explains that “ultimately it’s going to be a pardon, after ten years of living warrant free in Canada”. To him, much as Lebel and White describe the agency re-appropriation strategy of a wounded healer, there is hope, for by “pounding away and doing well and helping people and inspiring other people, then my karma will give me my pardon”. After getting it, Trevor confides: “I know that I want to start my own company right, so

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<sup>845</sup> Kelsey Amos, “Hawaiian Futurism: Written in the Sky and Up Among the Stars”, in *Liverpool University Press*, Vol. 57, No. 1-2, (2016), online: <<https://online.liverpooluniversitypress.co.uk/doi/10.3828/extr.2016.11>>.

I will create my own future of never having to worry about doing a background check. Fuck anyone who can't forgive me". Subsequently, for me this is how I feel now, without a pardon or records suspension, as I have a hard time reconciling despite having long-ago completed all my sentencing procedures that I am still being punished by having a criminal record. However, as record suspensions are just deferments of one's criminalization, and the pragmatic reality that Google or any such similar search engine can readily access your past criminal history, there may be no real forgiving or forgetting to be found from the stigmatization of criminalization, unless found in yourself.

Criminal records can rob people of agency, as self-stigma and its spectrum of feelings found in some variety of fear, shame, alienation, sadness, and anger demonstrates that criminalized individuals internalize negative stereotypes that in turn affect self-esteem and self-efficacy. Link *et al.*, explain a modified labelling theory that attempts to address not just the power dynamics that result in the stereotypes and prejudice of stigma but also the negative outcomes caused by the social inculcation of such categorizations.<sup>846</sup> Mandated criminal record checks moreover hold individuals and their agency ransom as stigmatized individuals anticipate and perceive negative societal reactions that can in turn lead them to withdraw from society, and cause in essence a revising of themselves to prevent any possible and further harm to their own self-concept. Despite comfort being found in one's innovative spirit and network of empathic friends, full and unimpeded integration in society seems only possible with a record suspension, and even that process is fraught with difficulties, not a possibility to everyone, and transitory in nature, especially within the age of digital information.

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<sup>846</sup> Bruce Link *et al.*, *supra* note 488, at 400.

## Chapter 5- Conclusion

According to action research, this academic journey for now comes full circle. This section is intended to help the reader understand the importance of what has been presented. However, it is not a matter of merely summarizing the main topics covered (i.e., agency, criminalization, surveillance, the culture of control, stigmatization, and emotions) or re-stating my research problem (i.e., In what ways, if any, does having a criminal record cause self-stigmatizing effects and, if so, how do these self-stigmatizing effects make people feel). This conclusion provides a reflection on the narratives provided through a synthesis of the key points, and, where applicable, a recommendation of new areas for future research.<sup>847</sup>

### 5.1- Synthesizing the Key Points

Riessman advises that the narratives people tell are strategic, functional, and purposeful, as they not only link the past with the future,<sup>848</sup> they give, as Morton proposes, meaning to the world we live in, as “all the objects in the world would be shards of bare mute blankness, spinning wildly out of orbit, if we didn't bind them together with stories”.<sup>849</sup> However, as Doucet suggests, instead of access to the subject we only are privy to their narrated subjectivity. The stories told by Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor around my research question(s) are the ‘vignettes’ by which they make sense of the world in which they live. Therefore, this thesis, despite being my own subjective understanding of my research, is through the themes extrapolated from the stories and experiences provided by both my respondents and myself, a thick description of how people with criminal records think and feel enabled by an

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<sup>847</sup> The Writing Center. “Conclusions”, The University of North Carolina at Chapel Hill, online: <<https://writingcenter.unc.edu/tips-and-tools/conclusions/>>.

<sup>848</sup> Riessman, *supra* note 766, at 539.

<sup>849</sup> Morton, *supra* note, 637, at 185.

iterative process of combining theory with observation and reflection to surface patterns of relationship.

Found within this social context is that in Canada, criminalized individuals are burdened by their criminal records, perhaps unduly if there is a true desire to see them integrate as full-members of society. Words have power, where the labels they produce, like that of criminal, do not just categorize but castigate as well. When applied to individuals in society these ‘tags’ influence behavior, as those labelled sometimes have little choice but to conform to the essential meaning of that judgment. This is particularly the case in today’s society with its overarching apparatus of control and manipulation made easy through information gathering. Surveillance is now the bureaucratic evolution of punishment within a risk-oriented paradigm. Today’s panopticism permeates all levels and recesses of society in order to keep it safe from itself. However, this omnipresent observation, although based on risk-aversion, when left unchecked becomes a risk from which society itself needs to be protected, as this new culture of control seems more a political tool than pragmatic instrument of social betterment. This trend of increased securitization and political capital encourages society to feel safer with a healthy dependence on government intervention and oversight (i.e., criminal records).

The general public, when they think of them at all, erroneously associate criminal records with safety; however, since police proficiency and the availability of less stigmatizing electronic technologies of surveillance, the egregious effects of stigma attached to legislatively mandated criminal records may not (for certain situations) actually be a needed addition to the panoptic arsenal to make society feel or be safer. The stigma attached to one’s criminalization is not just a shadow, forever obscuring the real person and their potential from the criminal they have been labeled, but is, moreover, a spotlight pointing them out for all to see. In today’s computer age, a

criminal record has become an indelible mark separating those who are differentiated as unworthy for doing something probably every adult has done in their life: that is, making a mistake. People with criminal records internalize this stigma. Perhaps a reimagining of Descartes famous axiom to read 'I feel therefore, I am' is warranted, as emotions do not just tell important things about how people feel and think, but they also underlie the structure of our social institutions. As such, in regards to how Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor feel about their criminalization, this thesis proposes that self-stigma is found in the embodiment of the emotions of fear, anxiety, shame, embarrassment, discrimination, alienation, sadness, and anger.

Fear and anxiety surround the dissemination of one's criminalized status which in turn leads to social distancing, as the sharing of such information negates perceptions of normalcy, tainting an individual to those around them. Those marked by the invisible stripes of their past interaction with the criminal justice system are in effect silenced as they live lives caught in a social-game of avoidance and anticipation. Feeling comfortable around the small network of those they trust and love but 'anxious', 'nervous', and 'shaking' around the greater matrix of people they do not know in society and sadly more so 'traumatized' around law enforcement. Also, found was that those who are criminalized are 'haunted' by the process as their criminalization is something they think of every day, being a 'skeleton in their closet'.

Shame and embarrassment, as well as pride and remorse are also emotions attached to one's criminalization. However, notwithstanding certain instances of the beneficial social aspects of these feelings, in relation to criminal records and criminal record checks there is a disintegrative propensity to these emotions that further criminalizes those caught in the process, driving those marked in society further away from those who are not. People with criminal

records live a tenuous existence trying to shield themselves from the prying eye of those around them. Akin to fear but separate, shame and embarrassment leaves those with criminal records feeling 'less than' a full member of society as the discovery or possible discovery of their criminalization leaves them perpetually reminded of their dishonourable past.

From within a backdrop of discrimination, the stage of the many inter- but moreover, intrapersonal interactions of those who are criminalized in society are set, as this self-stigmatizing *mise-en-scène* of life is maintained by the unjust and prejudicial treatment of those who have a criminal record. This constant discriminating environment that is life not only leads to the perceived and persistent alienation of those in society who are just trying to do their best and fit in despite their criminalization, and it inculcates a sliding scale of moral culpability, in regards to the comparative specifics of one's own criminal past to the criminalization of others. As such, a criminal record has been likened to a 'blemish on one's life' that leaves people feeling 'painted with a certain brush' and a 'little-less-than' compared to those in society who are not so flawed, fostering and reproducing feelings of non-acceptance and estrangement.

The feeling of sadness in relation to having a criminal record, no matter how it is framed, be it 'dejection', 'devastation', 'disillusionment', 'disenchantment', 'regret', 'remorse', 'feeling crappy', 'hard done by', or 'kicked in the teeth' encompasses a spectrum of similar feelings, but the foremost reason behind these 'depressed', 'disgusted', 'regretful', and 'heartbroken' personal outlooks concern situations of perceived loss that are unpleasant, unfair, and that conflict with personal goals, similar to how one's criminalization prevents full integration in society. As such, sadness seems a self-fulfilling, self-stigmatizing prophecy, as sadness leads to more sadness, and as a result the reification of self-stigma.

Lastly, people most often feel angry in situations that are unpleasant, unfair, and have external causation, much like the constraints and effects associated with criminalization. As such, feelings of ‘anger’ burn with hatred and smolder with ‘frustration’ in relation to how criminal records tirelessly intimidate and deny those who are criminalized the life chances afforded those who are not so categorized in society. My respondents were not ‘happy campers’ and were instead ‘pissed off’, ‘bitter, and ready ‘to choke someone’; however, these emotions were fleeting having softened with time. Now, Barry thinks himself ‘lucky’, Caleb has a ‘love-hate’ relationship with his criminal record, and the feelings of apathy of Martin, Bobby, Timothy, Charles, and to some degree myself, towards our criminalization suggests if not an acceptance of this labelling at least a sense of exhaustion in relation to it.

A criminal record could be said to hold an individual and their agency ransom, as ones’ criminalization is described as a ‘roadblock’, ‘obstacle’, ‘hoop to jump through’, ‘glass ceiling’, ‘something you don’t want’, and an ‘anchor’. As such, stigmatized individuals anticipate and perceive negative societal reactions that in turn lead them to withdraw from society, causing in essence a modifying of themselves to prevent any possible and further harm to their own self-concept. However, an innovative spirit and a network of empathetic friends can lessen the stigmatization of criminalization. Nevertheless, full and unimpeded integration in society apart from the eternal memory of the World Wide Web, seems almost possible only with getting a records suspension. The price, the process and the possibility of actually getting one, though, is a structural burden preventing most from finding release from their self-stigmatizing existence. Still, the resolve of my respondents to live the life they are able demonstrates an obdurate reserve to persevere, bringing to light a tension between stigma and agency as there is a resilience established in their narratives that allows them to live by navigating society in a manner all their

own. Despite telling stories in relation to fear, shame, discrimination, alienation, sadness, and anger, the stories told were ones of a future where they were accepted; however, until then, the structural barriers of stigma and criminalization, regardless of demarcating their landscape, do not define how my respondents live, as they live no particular way but their own. Martin, Barry, Charles, Bobby, Timothy, Caleb, and Trevor are not concerned that More, Tangney, and Stuewig suggest that criminalization is a robust predictor of poor functioning in society, nor, more notably, that society is functioning poorly for them. Instead, the stories recounted by them are ones of hope where a future is just that, a future worth living no matter what limitations are attached. As such, regardless the new oversight of ‘the culture of control’, criminalized individuals seem only limited by not getting a records suspension, that is, if getting a records suspension is actually needed or, more so, possible.

Exploring self-stigma through the way it is embodied by my respondents and myself humanizes our stories and by using the lens of emotion focusses this research on what is important to the human condition, being how people in society feel. Feelings help us to understand ourselves and to connect with other people; they oblige us to take action, guiding perhaps all the decisions we make about our lives. However, as the attrition rate of possible participants in this research indicates, knowledge of the society lived in and experienced by those who have a criminal record is a not just a narrative missing from social discourse and justice imperatives. It also is a dialogue absent from those who are criminalized themselves, as the silencing and exhaustive nature of one’s criminalization attests. Nevertheless, with this thesis, and the help of my respondents, my voice is given their strength to confirm the self-stigmatizing nature of having a criminal record. Our stories are important in that they are templates from

which growth and development occur, as well as the archetypes from which the past should be abandoned.

## **5.2- Directions for Future Research**

As an undertaking in action research, this inquiry not only adds breadth and scope to the current literature about how record-bearers live with the negative consequences associated with their criminal record, but is also a more fulsome understanding of how people feel about their criminalization from a Canadian perspective. Patterns found within the narratives provided by my respondents suggest a correspondence to self-stigma; however, how and why this is the case is a more pressing concern. Constructivism explains individuals have learned to believe that criminal records are to protect and keep society safe from people who have broken the law, as the criminalized are a dangerous and untrustworthy lot. Validation for this erroneous need to separate those who have and have not had a past interaction with the criminal justice system is additionally lent insight from a critical perspective that understands self-stigma and emotions as being enmeshed within a broader dynamic of political and social power. However, the idea of eradicating society's ability to 'other' those around them by treating individuals or groups of people as intrinsically different and alien is currently beyond the purview of this thesis. There is, however, a present and pressing need to move toward eliminating the structural self-stigma that is associated with having a criminal record, especially considering the people who have them already face considerable obstacles. Therefore, despite this thesis drawing to a theoretical close, the iterative nature of action research suggests this end marks a start to helping myself and others that are similarly situated. Notwithstanding the structural and societal barriers of my criminalization, I do not necessarily have to accept them; as an action research project the need for my thesis lives on. I would like to see this research contribute to helping shape public policy

and, to this end I will be reaching out to Senator Kim Pate's office as her past experience with the John Howard and Elizabeth Fry Society's, as well as her current interests in criminal justice reform positions her as someone who could further my respondents' and my platform. Likewise, contacting Public Safety Canada, getting involved in the *Criminalization and Punishment Education Project*,<sup>850</sup> and presenting my research at Carleton's Annual Legal Studies Graduate Conference, are also ways to better advance the findings of this thesis, as action research intimates a larger community of caring and culture. The message is first, that the record suspension process should be made as straight forward and affordable as possible, and second, ultimately lead to the simple expiry of criminal records in most instances.

Nonetheless, since this research dealt only with a limited number of (cis) male gender respondents, besides increasing the sample size, interviewing a variety of gender categories could provide a more robust understanding of how (more) people feel about their criminal records. Furthermore, as emotions seem something better discussed in private (if discussed at all), a quantitative analysis may broaden the information base. Such an approach would further explore this thesis' realization that criminal records, to a greater and lesser degree, make people feel fear, anxiety, shame, embarrassment, discrimination, alienation, sadness and anger, or other feelings, and contribute to what has been described as an undertheorized field. Also, as there is a risk-aversion paradigm involved with mandating criminal records, evaluating the trade-off between the perceived greater safety of society and the limiting of an individual's full contribution to society, is another direction for future research, be it qualitative or quantitative in nature. This is particularly the case, as the current Canadian government seems amenable to overhauling the existing criminal records and records suspension framework. Additionally, as

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<sup>850</sup> Criminalization and Punishment Education Project, online: <<http://cp-ep.org/mission-statement/>>.

there is an exhaustive nature to self-stigma, somehow tracking its periodization would be beneficial to increasing its understanding. Another avenue to explore in relation to the recent Supreme Court of British Columbia case of *Chu v. Canada (Attorney General)* in which criminal records are understood as a form of punishment, is a Section 12 Charter test as “everyone has the right not to be subjected to any cruel and unusual treatment or punishment”. Particularly when in the 1800’s, the legislature of Upper Canada ensured that local courts had discretion to impose a moderate pecuniary fine rather than some other lasting mark of disgrace and infamy.

### **5.3- To Actually Conclude**

People with criminal records are both products and members of Canadian society, and by understanding how they experience living with their legislatively mandated stigmatizing mark today, we can help better inform contemporary policy conversations and development. This is especially the case if policy is to be based on accountability, transparency, and empiricism, as so many political platforms attest. As such, the information provided, coupled with how my respondents and I feel about our criminalization, show an institutionally enforced self-stigmatization that in certain situations prevents people from doing what other people can. This burden is silently endured by those marked with a past criminal justice interaction until statutory release is found through a supposedly benevolent and unbiased records suspension process. However, the promised ability of this elaborate and costly process to help conceal a mark of criminalization, is one with which I am still perplexed, as I both feel and believe, like my respondents, that after having served my sentence, my criminal past should be, if not forgiven, then at least as Friedrich Nietzsche suggests, forgotten.<sup>851</sup> To him, “no happiness, no serenity, no hope, no pride, no enjoyment of the present moment could not ever exist without the possibility

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<sup>851</sup> Friedrich Nietzsche, in Walter Kaufman, ed., *On the Genealogy of Morals and Ecce Homo* (New York: Random House, 1989[1913]), at 58.

of forgetting”.<sup>852</sup> The insistence on criminal records as a necessary measure to keep society safe can be likened to someone always walking backward; lost in the past they stumble in the present, hindering their future. However, this research, through its unique sample population of those subsisting alongside their criminalization and its atypical questions about how a criminal record is embodied by those who have one, reveals that structure is not a fixed determinant but a moving set of possibilities relative to how much someone wants to integrate in society.

Unfortunately, how can we achieve and aspire to do more if more is not only not allowed, but we actually self-censor our actions based on our understanding of ourselves as people unwanted and less valuable? My life is somewhat a process of controlled letdowns, as wasting time, money, and energy to be told no, besides being tiring and emotionally draining, it prevents me from doing that which I and those who I love really want and from which society could benefit, that is participating in a more fulsome way as a contributing member. To conclude, the double-negative in the title of this thesis indicates, despite fantasizing that one’s criminalization does not affect them, there is a damaging nature to the stigmatizing labels attached to having a criminal record. As such, the Canadian government should re-evaluate its position on the efficacy of criminal records (for certain situations), or at least criminal record checks (for certain situations), as labels are best reserved for jars and jeans, given being branded a criminal prevents people despite their own resilience from being who they ultimately could be.

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<sup>852</sup> *Ibid.*

## Appendices

### Appendix A: Criminal Record Checks in Regards to Canadian Common Law and the Constitution...<sup>853</sup>

They are permissible if they concern a position of trust (i.e.),

*Ontario March of Dimes v Canadian Union of Operating Engineers and General Workers*, [1999] OLAA No 569.

-the case found that privacy rights are secondary to ensuring those employed were a certain type of person.

*Vancouver (City) v Canadian Union of Public Employees Local 15* (2007), 91 CLAS 298.

-the case found that criminal records checks are reasonable when they concern a sensitive position of trust.

*Vancouver (City) v Canadian Union of Public Employees Local 15* (2008), 92 CLAS 174.

-this case further clarified what a position of trust was in that it involved matters requiring significant contact with vulnerable people.

*Ottawa (City) v Ottawa Professional Firefighters Association* (2007), 169 LAC (4<sup>th</sup>) 84.

-this case ruled against periodic background checks but saw the prerequisite of screening new hires as valid.

Consent must be informed, voluntary and given without coercion (i.e.),

- *Ottawa (City) v Ottawa Professional Firefighters Association*, [2009] OJ No 2914.

-this case found that periodic criminal record checks infringed ones privacy rights unless written consent is given

- *Tadros v Peel (Police Service)*, 2009 ONCA 442.

-this case found that it was not unconstitutional to disclose information about one's criminal record (even if the charges have been withdrawn) if vulnerable people are involved.

In regards to non-conviction records,

*Lin v Toronto Police Services Board*, (24 January 2004), Toronto 75318/03, (Ont Sup Ct J).

-this case determined if someone was never convicted then they were never an offender and as such, any archived information should be destroyed

*R v Dore* [2002] 162 OAC 56.

-this case was evaluated in regards to section 8 of *The Canadian Charter of Rights and Freedoms* that ensures protection against unreasonable search and seizure. It found that it is constitutionally permissible to retain fingerprints after an acquittal, placing the onus on the individual who was acquitted to ask that their archived information be removed themselves.

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<sup>853</sup> Presumption of Guilt, *supra* note 47.

*JN v Durham Regional Police Service, 2011 ONSC 2892 (overturned at the Court of Appeal for Ontario on other grounds, JN v Durham Regional Police Service, 2012 ONCA 428).*

-this case was evaluated in regards to the common law duty of fairness and section 7 of *The Canadian Charter of Rights and Freedoms* that prohibits deprivations of life, liberty or security of the person that are inconsistent with the principles of fundamental justice. It found that the inability to obtain employment resulting from an inability to pass a criminal record check is unfair and “objectively, something which would cause serious psychological impact [and] accordingly is something that can affect the security of the person within the meaning of section 7 of the Charter”.<sup>854</sup>

*Police Record Checks Reform Act, 2015.*

-offers some help for people with non-conviction police records in Ontario only.

In regards to being a witness in court

Section 12 (1) of *The Canada Evidence Act*, RSC 1985, c C-5, states:

A witness may be questioned as to whether the witness has been convicted of any offence, excluding any offence designated as a contravention under *The Contraventions Act*,<sup>855</sup> but including such an offence where the conviction was entered after a trial on an indictment.

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<sup>854</sup> At para, 128.

<sup>855</sup> R.S.C., 1985, c. C-5

## Appendix B: The Ten Steps to Apply for a Record Suspension...<sup>856</sup>

### Step 1 - Get your Criminal Record

You must submit your fingerprints electronically, which ensures more accurate Criminal Record checks and dramatically reduces the amount of time required to complete the check.

You simply have to visit an accredited company or a police service with an electronic submission device to have your fingerprints taken

The technology allowing electronic submission is now widely available in Canada and effective July 1, 2014; your fingerprints must be submitted electronically, using either LiveScan or CardScan technologies.

For inquiries visit the Royal Canadian Mounted Police website or call 613-998-6362

**Wait to receive your Criminal Record** (Criminal Convictions, Conditional and Absolute Discharges form) or a **Certification of No Criminal Record** from the RCMP. The Parole Board of Canada (PBC) will accept either one.

If you have **convictions outside of Canada**, you **MUST** also **submit information** to the PBC **on these convictions**, along with your Criminal Record.

**Once you've received your Criminal Record**, check it carefully to make sure all of your convictions are on it. You are responsible to ensure that all of your convictions are submitted to the PBC.

### If YES go to Step 2 - Get your Court Information.

If **NO**, you must get a **Proof of Conviction** for each conviction missing from your Criminal Record, or for no record. Contact the court that heard your case and/or the Police Service that arrested you to get this.

The Proof of Conviction **must** include:

- **Date:** the date and court where you were sentenced
- **Offence:** the offence that resulted in your conviction
- **Sentence:** the sentence you received
- Arresting Police Force

If the Court and/or Police Service do not have a record of your conviction(s), request this in writing, and contact the Parole Board of Canada **Toll-free Helpline at 1-800-874-2652** for assistance.

### Step 2 - Get your Court Information

You must get **Court Information** for **each** of your **convictions**. **This MUST** include proof of payment for any fines, victim surcharges, restitution, and compensation [If you were ordered to pay restitution to an individual or entity, courts may not be able to confirm payment (if this is the

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<sup>856</sup> Government of Canada, "The 10 Steps to Apply for a Record Suspension *supra* note 76.

case, call the PBC at 1-800-874-2652)] (including date of final payment). **This MUST** also include the method of trial for each conviction (either summary or indictable). The method of trial will decide your eligibility for a record suspension (5- or 10-year waiting period) and how your request will be processed. **If this information is not provided, the longest waiting period (10 years) will be applied to your file.**

**Fill in questions 1 to 6** on the **Court Information Form** at the back of this Guide. Make copies of the form first in case you need to give it to more than one Court.

### **Contact the Court that heard your case.**

If you were sentenced in more than one Court, you must contact each Court and have them fill in this form. Give each Court a photocopy of your Criminal Record and ask each Court to fill in the section on the Court Information Form called **For Court Use Only**.

### **IMPORTANT!**

#### **Make sure that each Court:**

- **Fills in all information** in the For Court Use Only section of the form
- **Signs and dates** the form
- **Puts their official Court seal or stamp** on the form
- **Gives you 2 copies of all your Court documents** so you have an extra copy for yourself, in case you need these in the future (example: to enter a foreign country). It's easier to get a copy now as the record may not be available if a record suspension is ordered.

**Compare the information** from the Court on the Court Information Form with your Criminal Record and check for the following:

- If there is a discrepancy with the information on the Court Form and Criminal Record, or if the Court has a Record of Conviction that does not appear on your Criminal Record, you must ask the Court for a **Proof of Conviction**. See Step 1: Proof of Conviction.

### **Step 3 - Get your Military Conduct Sheet**

**IF YOU ARE NOT** a current or past member of the Canadian Forces, **Go to Step 4**

**IF YOU ARE** a current or past member of the Canadian Forces (Regular or Reserve) you must get a certified, signed and dated copy of your **Military Conduct Sheet** by contacting the appropriate organization below if no conduct sheet exists you must provide a letter from your Commanding Officer.

#### **REGULAR MEMBERS:**

If you **left less** than 5 years ago, get it from the DMCA: National Defence Headquarters  
101 Colonel By Drive, Ottawa, Ontario K1A 0K2, Attention DMCA-4.

If you **left more** than 5 years ago, get it from the Personnel Records Unit: Personnel Records Unit, National Archives of Canada, 395 Wellington Street, Ottawa, Ontario K1A 0N3.

#### **RESERVE MEMBERS:**

If you **left less** than 3 years ago, get it from your Commanding Officer of your last posting or Unit.

If you **left more** than 3 years ago, get it from the Personnel Records Unit: Personnel Records Unit, National Archives of Canada, 395 Wellington Street, Ottawa, Ontario K1A 0N.

### **IMPORTANT!**

Include all correspondence from your Commanding Officer, National Defence or National Archives with your application.

For **current members**, your Military Conduct Sheet should be certified, signed and dated by your Commanding Officer, and is **only valid for 6 months** from the date of issue.

Make sure that your request for your Military Conduct sheet includes the following information:

- Shows that the reason for the request is for a Record Suspension Application;
- Your first and last name. (If it has since changed, it must state your name at the time);
- Your date of birth;
- Your military Identification Number or Service Number;
- Your signature;
- Enlistment and discharge dates.

#### **Step 4 - Get your Local Police Records Check(s)**

You must get a **Local Police Records Check for:**

- The city or town where you live now (your current address) **AND**
- For each city or town where you have lived during the last 5 years (if you lived in that city or town for **3 months or more**).

### **IMPORTANT:**

Each Local Police Records Check is **only valid for 6 months** from the date it was issued.

#### **Here is how to get a Local Police Records Check**

-Fill in **ALL** questions on page 1 of the **Local Police Records Check Form** included at the back of this Guide. Photocopy it for each local Police Service that you need to contact.

**-Contact** the local Police Service for the address where you live right now. In the past 5 years, if you have lived at addresses that are different from where you live right now, you must contact each local Police Service for each address where you lived. If you are not sure which Police Service to contact, ask the one where you live now.

-If you lived outside of Canada you still need to contact the local Police Service where you lived outside of Canada. If the Police Service outside Canada will not give you a Local Police Records Check, a signed letter from the Police Service stating that you have been of good conduct will be

accepted. If it is in a foreign language, you must have it translated into English or French and submit both the original and the translated version with your application form.

**-Show each local Police Service your Criminal Record** and ask them to fill in the section on the Local Police Records Check Form called For Police Use Only on page 2 of the form.

-You will need to show 1 current piece of photograph identification and 1 other piece of identification (contact the Local Police Service in advance to find out what types of identification they will accept).

### **IMPORTANT!**

Make sure each Police Service includes the following information on each **Local Police Records Check Form** or the Parole Board of Canada will return it to you:

- All information required in the **For Police Use Only** section that is on page 2 of the form
- Signature and date by the local Police Service
- Local Police Service official seal or stamp

#### **Step 5 - Get your Proof of Citizenship or Immigration Documents**

If **YOU** were born **IN** Canada **OR** are **NOT** currently living in Canada, you do not need to get Proof of Citizenship or immigration documents, Go to Step 6.

If you were born **outside of Canada AND you are currently living in Canada**, then you must include a photocopy of your official and valid immigration documents with your Record Suspension Application.

If you are in Canada **with no immigration status**, then you must confirm this by providing a photocopy of an official document with your Record Suspension Application.

### **IMPORTANT!**

Expired documents are not accepted.

If your documents **expire** while the Parole Board of Canada (PBC) is processing your Record Suspension Application, you must provide an updated, valid photocopy, or your Record Suspension Application will be delayed.

**DO NOT send original immigration documents, only SEND photocopies of immigration documents.**

#### **Step 6 - Get a copy of your document to support your identity**

To apply for a record suspension, you must submit with your application form, a clear photocopy of a document which supports your identity. This government issued (Federal, Provincial or Municipal) document must have your name, date of birth and signature.

#### **Step 7 - Complete the Schedule 1 Exception Form**

Under Section 4(2) of the *Criminal Records Act* (CRA), a person **is ineligible** to apply for a record suspension if he or she has been **convicted of an offence referred to in Schedule**

**1 (sexual offence involving a child)** with certain exceptions.  
Refer to Justice Laws Website.

If you have **NOT** been convicted of a **Schedule 1 offence** under the CRA, you **DO NOT** need to complete the Exception Form, Skip to Step 8.

If you **HAVE** been convicted of a **Schedule 1 offence**, you **MUST** complete the **Exception Form** if you are applying for a record suspension. Under Section 4(3) of the CRA, a person who has been convicted of an offence referred to in *Schedule 1* may apply for a record suspension **IF** the Board is **satisfied** that:

- The person was not in a position of trust or authority towards the victim of the offence and the victim was not in a relationship of dependency with him or her;
- The person did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the victim; and,
- The person was less than five years older than the victim.

Fill in **ALL sections** of the **Exception Form**. If you do not fill in all sections, the Parole Board of Canada (PBC) will return your application to you. If you don't have enough room to include all the requested information, attach additional pages to the form.

### **Step 8 - Fill in the Record Suspension Application Form**

**TO APPLY** for a record suspension you must use the Record Suspension Application Form at the back of this Guide.

#### **IMPORTANT:**

The Record Suspension Application Form is only valid for 6 months from the date you sign it.

#### **Fill in ALL questions in the Record Suspension Application Form.**

If you do not fill in all of the questions on both page 1 and 2 of the form, the Parole Board of Canada (PBC) will return the application and all documents back to you. Print in **BLOCK** letters using blue or black ink only.

If you don't have enough room to include all the requested information, please attach additional pages to the form with the information on it.

**Make sure to include the \$631.00 (CDN) Record Suspension Application Processing Fee** in a certified cheque, money order or bank draft payable to the Receiver General for Canada. The Parole Board of Canada will not accept a personal cheque. Do not send cash.

#### **IMPORTANT!**

Before you mail your Record Suspension Application make sure that you have:

- Filled in all questions on both sides of the form
- Answered all questions truthfully and completely
- Signed and dated the form. As the applicant, the form must be signed by you

- Included the \$631.00 (CDN) Record Suspension Application Fee (payable to the Receiver General for Canada)
- Photocopied all of your Record Suspension Application documents for your own records and future reference.

### **If you change your address...**

**IMPORTANT:** The Parole Board of Canada must be able to contact you directly. If you are unable to be contacted and/or the information or documents you provide are not verifiable, your application may not be processed. If your mailing address changes after you submit your application, you must send the Parole Board of Canada a letter with your new mailing address.

Make sure the letter includes:

- Your name
- Your Record Suspension Application Personal Reference Number
- Your new mailing address
- Your signature. As the Applicant, the letter must be **signed by you**.

### **Send the letter to:**

Parole Board of Canada,  
Clemency and Record Suspension Division  
410 Laurier Avenue West, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0R1

Even after you receive a record suspension, you must advise PBC of a change of address.

### **Step 9 - Complete the Measurable Benefit / Sustained Rehabilitation Form**

As per section 4.1 of the *Criminal Records Act* (CRA), you must clearly describe how receiving a Record Suspension would provide you with a measurable benefit **AND** sustain your rehabilitation into society as a law abiding citizen.

Fill in **ALL** sections of the **Measurable Benefit / Sustained Rehabilitation Form** included at the back of this Guide. If you do not fill in all sections, the PBC will return your application to you. If you don't have enough room to include all the requested information, attach additional pages to the form.

### **Step 10 - Complete this Checklist before you mail your record suspension application!**

Keep a photocopy for yourself of all documents you submit to the Parole Board of Canada (PBC).

### **RECORD SUSPENSION APPLICATION CHECKLIST:**

Have you included these documents in your Record Suspension Application?

1. Original **Criminal Record** or **Certification of No Criminal Record AND Proof of Conviction** documents, as required (explained in Step 1)
2. Original **Court Information Form** (explained in Step 2)
3. Original **Military Conduct Sheet**, as required (explained in Step 3)
4. Original **Local Police Records Check(s)** (explained in Step 4)
5. Photocopy of **Proof of Citizenship** or **Immigration Documents**, as required (explained in Step 5)
6. Photocopy of your **identification document** (explained in Step 6)
7. Original **Schedule 1 Exception Form**, as required (explained in Step 7)
8. Original **Record Suspension Application Form** (explained in Step 8)
9. Measurable Benefit/Sustained Rehabilitation Form (explained in Step 9)
10. **\$631.00 (CDN) Record Suspension Application Processing Fee** (explained in Step 8)

**Mail your Record Suspension Application Form, \$631.00 (CDN) Application Fee** (credit card payment or certified cheque, bank draft or money order, payable to the Receiver General for Canada), and all official documents (originals only) to the PBC at this address:

Parole Board of Canada,  
Clemency and Record Suspension Division  
410 Laurier Avenue West, 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0R1

## Appendix C: Provinces and Territory's Where Human Rights Legislation Offers Help to Those with Criminal Records...

Alberta... No.<sup>857</sup>

Saskatchewan... No.<sup>858</sup>

Manitoba... No.<sup>859</sup>

Ontario... No, unless non-conviction related.<sup>860</sup>

Quebec... No.<sup>861</sup>

Nova Scotia... No.<sup>862</sup>

New Brunswick... No.<sup>863</sup>

Northwest Territories... Yes, for a pardoned criminal conviction.<sup>864</sup>

Nunavut... Yes, for a conviction for which a pardon has been granted.<sup>865</sup>

British Columbia... Yes, in regards to a conviction related to employment.<sup>866</sup>

Newfoundland and Labrador... Yes, in regards to a conviction related to employment.<sup>867</sup>

Prince Edward Island... Yes, for a criminal conviction.<sup>868</sup>

Yukon... Yes, for criminal charges or criminal record.<sup>869</sup>

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<sup>857</sup> *Alberta Human Rights Act*, RSA 2000, c A-25.5.

<sup>858</sup> *The Saskatchewan Human Rights Code*, SS 1979, c S-24.1.

<sup>859</sup> *The Human Rights Code*, CCSM c H175.

<sup>860</sup> *Human Rights Code*, RSO 1990, c H.19, Bill 113, *Police Record Checks Reform Act*, 2015.

<sup>861</sup> *Charter of Human Rights and Freedoms*, CQLR c C-12.

<sup>862</sup> *Human Rights Act*, RSNS 1989, c 214.

<sup>863</sup> *Human Rights Act*, RSNB 2011, c 171.

<sup>864</sup> *Human Rights Act*, SNWT 2002, c 18.

<sup>865</sup> *Human Rights Act*, SNU 2003, c 12.

<sup>866</sup> *Human Rights Code*, RSBC 1996, c 210.

<sup>867</sup> *Human Rights Code*, RSNL 1990, c H-14.

<sup>868</sup> *Human Rights Act*, R.S.P.E.I. 1974, Cap. H-12.1.

<sup>869</sup> *Human Rights Act*, RSY 2002, c 116.

## **Appendix D: Information Concerning the Interviews...**

Martin, in person, Ottawa, Ontario, Canada, June 10, 2018.

Barry, in person, Ottawa, Ontario, Canada, June 21, 2018.

Charles, in person, Ottawa, Ontario, Canada, July 8, 2018.

Bobby, in person, Ottawa, Ontario, Canada, July 7, 2018.

Timothy, in person, Ottawa, Ontario, Canada, July 19, 2018.

Caleb, in person, Ottawa, Ontario, Canada, July 30, 2018.

Trevor, in person, Ottawa, Ontario, Canada, October 18, 2018.

## Appendix E: Interview Guide

I am concerned about how people with criminal records experience self-stigma and how they talk about it. Therefore, my main line of questioning will revolve around:

... How my participant's criminal record has affected their life?

This question will be followed up with probes in relation to what they are specifically discussing or in regards to other possible examples of self-stigma surrounding employment, adoption, international travel, volunteer work, citizenship, education, jury duty, house rental, dating, insurance and retirement planning.

Whenever applicable, I will also ask: how my participant's feel about these situations. Additionally, in closing I will ask: if my participant's understand themselves as people who have a criminal record.

My main concern as already explained is that my participant's tell me their story in their own voice, whatever, that story may be.

When they talk about something ask for examples... get their voice... do not force them to tell you but ask if this emotion might frame what you are trying to say ... but only after they have discussed it in a way that might lend to some clarification.

Perhaps at the end thank them and share my story with them. Some type of reciprocity where it is not exactly equal but an acknowledgement that this is how they live their lives and I thank them for sharing it with me... some validation for the experience of partaking in the interview.

## Appendix F: Ethics Information



### Letter of Invitation

**Title of Thesis:** *“Sticks and Stones Will Break My Bones but Names May Never Not Hurt Me: Exploring emotions and self-stigma in living with a criminal record”*

Dear Sir,

My name is Alan Harvey and I am a Master’s student in the Law and Legal Studies Department at Carleton University. I am working on a research project under the supervision of Professor Sheryl Hamilton.

I am writing to you today to invite you to participate in a study on self-stigma and criminal records. This study aims to explore how people feel about their criminal records.

This study involves one 60 minute interview that will take place in a mutually convenient, safe location. With your consent, interviews will be audio-recorded. Once the recording has been transcribed, the audio-recording will be destroyed.

While this project does involve some psychological and emotional risks, care will be taken to protect your identity. This will be done by keeping all responses confidential and allowing you to request that certain responses not be included in the final project (all information provided will remain unidentifiable, as you will be assigned a pseudonym and any information you provide will be attached to this false-name and not your own).

You will have the right to end your participation in the study at any time, for any reason, up until (June 1, 2018). If you choose to withdraw, all the information you have provided will be destroyed.

As a token of appreciation, I will be providing you with refreshments during the interview and a \$ 20 gift card.

All research data, including audio-recordings and any notes will be encrypted. Any hard copies of data (including any handwritten notes or USB keys) will be kept in a locked cabinet at Carleton University. Research data will only be accessible by the researcher and the research supervisor. As well, again all information provided will remain confidential, as you will be assigned a pseudonym and any information you provide will be attached to this false-name and not your own.

This ethics protocol for this project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research. Should you have questions or concerns related to your involvement in this research, please contact: Dr. Andy Adler, Chair, Carleton University Research Ethics Board-A (by phone at 613-520-2600 ext. 2517 or via email at [ethics@carleton.ca](mailto:ethics@carleton.ca)).

If you would like to participate in this research project, or have any questions, please contact me at Carleton University 613-520-3690 or [alan.harvey@carleton.ca](mailto:alan.harvey@carleton.ca).

Sincerely,

Alan Lee Harvey



### Consent Form

**Title:** *“Sticks and Stones Will Break My Bones but Names May Never Not Hurt Me: Exploring emotions and self-stigma in living with a criminal record”*

**Project #** 108767

**Date of ethics clearance:** May 15, 2018.

**Ethics Clearance for the Collection of Data Expires:** May 31, 2019

I \_\_\_\_\_, choose to participate in a study on stigma and criminal records. This study aims to understand your feelings about your criminal record. **The researcher for this study is Alan Harvey from Carleton University’s Department of Law and Legal Studies** [Alan is working under the supervision of Sheryl Hamilton from Carleton’s University’s Department of Law and Legal Studies].

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This study involves one 60 minute interview. With your consent, interviews will be audio-recorded. Once the recording has been transcribed, the audio-recording will be destroyed.

As this project will ask you about your past interaction with the criminal justice system, there are some potential risks to you psychologically and emotionally if your statements are of a sensitive nature. While this risk is expected to be minimal, I will take precautions to protect your identity. This will be done by keeping all responses confidential and allowing you to request that certain responses not be included in the final project. Should you experience any distress during the interview, you will be provided with contact information for counseling services available nearby.

You have the right to end your participation in the study at any time, for any reason, up until (June 1, 2018). You can withdraw by phoning or emailing the researcher or the research supervisor. If you withdraw from the study, all information you have provided will be immediately destroyed.

As a token of appreciation, you will receive a \$20 Tim Horton's gift card. This is yours to keep, even if you withdraw from the study.

All research data, including audio-recordings and any notes will be encrypted. Any hard copies of data (including any handwritten notes or USB keys) will be kept in a locked cabinet at Carleton University. Research data will only be accessible by the researcher and the research supervisor. As well, all information provided will remain confidential, as you will be assigned a pseudonym and any information you provide will be attached to this name and not your own.

Once the project is completed, all research data will be kept for five years and potentially used for other research projects on this same topic. At the end of five years, all research data will be securely destroyed. (Electronic data will be erased and hard copies will be shredded.)

If you would like a copy of the finished research project, you are invited to contact the researcher to request an electronic copy which will be provided to you.

The ethics protocol for this project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research. If you have any ethical concerns with the study, please contact Dr. Andy Adler, Chair, Carleton University Research Ethics Board-A (by phone at 613-520-2600 ext. 2517 or via email at [ethics@carleton.ca](mailto:ethics@carleton.ca)).

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Do you agree to be audio-recorded: \_\_\_Yes\_\_\_No

\_\_\_\_\_  
Signature of participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of researcher

\_\_\_\_\_  
Date



Canada's Capital University

## DEBRIEFING INFORMATION

### **What are we trying to learn in this research?**

This research examines the relationship between emotions, self-stigma, and criminal records. The interview you took part in explored any emotions about your criminal record, and how these feelings might relate to self-stigma. As well, information on the coping strategies you typically use, and how you tend to appraise yourself and different situations in regards to having a criminal record was also of importance. We are interested in learning more about how people feel about their criminal records so that this information might be used to benefit decision making in the future.

### **Why is this important to scientists or the general public?**

Previous research has shown a relationship between people's appraisals of different situations, and how they cope with those situations in regards to stigma in general. However, less is known about how the self-stigma of criminal records lead people to appraise themselves in different ways. Understanding the individual differences that might be associated with various life choices around living with a criminal record is important, since these life choices have a direct impact on how people lead their lives and feel about themselves. Impacts that are not just felt by the individual, but also their family and society as a whole. Therefore, since criminal records are legislatively mandated, understanding their repercussions should be a priority.

### **What are our hypotheses and predictions?**

We predict that individuals' with criminal records do not feel as they are fully accepted members of society and as such, edit their lives according to hiding the fact that they have had a past interaction with the criminal justice system.

### **Where can I learn more?**

Through, this email address [alan.harvey@carleton.ca](mailto:alan.harvey@carleton.ca) an electronic copy of this research will be provided.

### **Is there anything I can do if I found this experiment to be emotionally upsetting?**

Yes. If you feel any distress or anxiety after participating in this study, please feel free to contact the *Distress Center of the Ottawa Region* which is a twenty-four hour seven day a week help line that acts as a community resource for emotional support, crisis management and intervention, suicide risk and prevention. Their number is 613-238-1089. Similarly, the *Crisis Line* which is another support resource for those within Ottawa can be reached at 613-722-6914 or outside

Ottawa toll free at 1-866-966-0991 to address any difficulties related to participation within this research.

**What if I have questions later?**

If you have any remaining concerns, questions, or comments about the experiment, please feel free to contact Alan Harvey (Principal Investigator), at: alan.harvey@carleton.ca (613-520-3690), Dr. Sheryl Hamilton (Faculty Sponsor), at: sherylhamilton@cunet.carleton.ca (613-520-2600, ext. 1975).

Or please communicate with CUREB-A: If you have any ethical concerns with the study, by contacting Dr. Andy Adler, Chair, Carleton University Research Ethics Board-A (by phone at 613-520-2600 ext. 2517 or via email at ethics@carleton.ca).

Thank you for participating in this research!

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