

With Conviction: The Politics of Criminal Records Reform

Marco Brydolf-Horwitz

A thesis
submitted in partial fulfillment of the
requirements for the degree of

Master of Arts

University of Washington

2017

Committee:
Katherine Beckett
Sarah Quinn

Program Authorized to Offer Degree:
Department of Sociology

© Copyright 2017
Marco Brydolf-Horwitz

University of Washington

Abstract

With Conviction: The Politics of Criminal Records Reform

Marco Brydolf-Horwitz

Chair of the Supervisory Committee:
Professor Katherine Beckett
Department of Sociology

While scholars have charted the extent of exclusions people with criminal convictions face amidst an expanding carceral state, no studies have examined legal and political claims for the restoration of civil rights for people with criminal convictions. This thesis addresses that gap by examining how advocates in Seattle have mobilized to expand legal protections for people with criminal records. Drawing on non-participant observation, interviews and archival data, I investigate how reformers and opponents construct political claims about the meanings of a criminal record and the duties of the state and the private market in rolling back mass incarceration. I show that although crime clashes with ideas of choice and deservingness central to rights, advocates were able to construct people with records as morally deserving subjects through the language of fair chances and structural critiques of the criminal justice system. While these claims were successful in positioning people with records as worthy of government protection, they failed to convince opponents that a conviction does not signal greater risk. This case suggests that although there is political space for criminal records reform, these efforts may be fundamentally limited by tension between the moral qualifications of civil rights claimants and the risk-centric logic of the market.

CONTENTS

Introduction	1
Stigmatized Groups and Rights-Claiming	3
Mass Incarceration and Criminal Records	7
Methodology: An Ethnographic Case Study of Political Debate	10
Background: The Emergence of Criminal Records Reform in Seattle	15
“Round Pegs Into Square Holes”: Limited Legal Pathways for Reform	21
Advocate and Landlord Claims: Framing the Problem of Criminal Records	28
<i>Advocate Frames: Racial Equity and Fair Chances</i>	29
<i>Landlord Frames: Government Overreach and Risk</i>	33
Deliberation and Debate: Defining Housing and Criminal Records	36
<i>Defining Housing and Responsibility</i>	38
<i>What a Criminal Record Means</i>	41
Conclusion	46
References	51

TABLES

1. Claimsmaking Around Criminal Records..... 28

INTRODUCTION

For groups struggling to change existing social and political arrangements, rights-claiming offers a resonant, discursive platform and a playbook for constructing grievances. Articulating political claims through the language of rights communicates ideas about entitlements to resources or government protection that draw on the legitimacy of existing legal symbols (Scheingold 1974). When successfully codified, rights call on the state to protect individuals and groups. While legal protections and entitlements have historically sustained the power of dominant groups, formal recognition of rights holds, at the very least, access to state power (Zemans 1983). As such, legal rights also provide an end-goal for political action (Pedriana 2006). Although, in practice, they are not absolute, legal rights are tools for marginalized groups that leverage principles of equality and universalism to open up spaces within the law to challenge existing power hierarchies (Thompson 1975; Williams 1995).

Accessing legal protection, however, may be particularly difficult for heavily stigmatized groups, like people with criminal records. People with convictions face the added challenge of possessing a trait that itself justifies a loss of rights. Indeed, as a social class, criminals have historically been denied certain citizenship rights. In the context of mass incarceration, exclusionary laws and practices come with social costs. Contemporary penalties hamstring successful re-entry for a growing population of people whose criminal justice involvement is publically and permanently recorded (Jacobs 2015; Travis 2005). Beyond formal, legal exclusions, a conviction signals untrustworthiness, poor moral character, or potential danger – assumptions that severely limit access to social opportunities even when no formal barriers exist (Pager 2007). Recent mobilization efforts around what are called Fair Chance and, alternatively, ban-the-box laws attempt to alter the civil penalties that convictions currently entail. To date, 27

states and over 150 cities and counties prohibit employers from asking about convictions until applicants have already been screened by qualifications (Rodriguez and Avery 2017). These laws delay or otherwise restrict when employers and, more recently, landlords can see criminal background information in hiring or rental decisions.

Criminal records reform laws pose an important question: just how far will law extend to protect a stigmatized legal status? While not radical reforms, Fair Chance laws grant some legal protections for people with convictions. As such, these laws present a compelling case to examine not only rights-claiming for people with records, but also civil rights protections based on a legal status. While scholars have charted the extent of exclusions and implications of a modern “civil death,” no studies have examined legal and political claims for the restoration of civil rights for people with criminal convictions. This thesis addresses that gap by using non-participant observation, interviews and archival data to examine how reformers in Seattle have mobilized to expand legal protections for people with criminal records. Political debate over Seattle’s Fair Chance Housing ordinance offers a useful case study for investigating civil rights claims for people widely thought to be responsible for their legal statuses. This thesis seeks to advance two sets of questions: 1) what legal pathways exist for criminal records reform? And why did advocates pursue anti-discrimination protections? And 2) how do advocates make legal claims on behalf of people with criminal records, and how do opponents contest these claims?

I show that civil rights claims are not an inevitable reform strategy for addressing the social consequences of criminal records. Political and legal constraints funnel criminal records reform into right-like claims that challenge what records mean and how they should be used in the rental process. Unable to address the public nature and commercial distribution of criminal records, advocates turned to nondiscrimination regulations that target landlord decision-making.

After suffering an initial defeat, advocates began talking about “second” and “fair” chances for people with records. These claims helped construct people with records as morally deserving subjects. Although criminal histories clash with ideas of deservingness and a lack of choice central to anti-discrimination rights, advocates were able to construct people with records as worthy of state protection through the language of fair chances and structural critiques of the criminal justice system. Advocate claims, however, were only partially successful. Although landlords acknowledged that the criminal justice system is unfair and ineffective, and people with records deserved some legal protections, they did not support the proposed legislation. Instead, landlords viewed the problems of criminal justice – chiefly the failure to rehabilitate – as additional risks that the private market should not take on. Seen through the lens of risk, landlords interpreted the failures of the prison system as further justification for denying renters with records. Even as morally deserving subjects, people with records were still viewed as risks to be avoided. This case suggests that although there is political space for criminal records reform, these efforts may be fundamentally limited by tension between the moral qualifications of civil rights claimants and the risk-centric logic of the market.

STIGMATIZED GROUPS AND RIGHTS-CLAIMING

Much of the empirical literature on rights has focused on how and to what extent individuals and groups have parlayed rights claims into political gains. Within this tradition, scholars studying the extension of rights to new subjects have investigated who is able to successfully claim a right, under what conditions, and by what means (Failer 2002; Kandaswamy 2008; Kirkland 2008a; Polletta 2000). Access to rights has been limited to and by dominant groups. In the U.S., the rights-bearing subject was historically white, male, and propertied

(Harris 1995; Mills 2008). The formal, legal requirements of full citizenship were seen as markers of rationality, discipline and dedication to work. Perceived lack of these values excluded groups from the community of rights-bearers. McCann (2014: 253) writes, “at every point in North American history, the standard of rights qualification...has been deployed as a normative force denying many people from even basic recognition and status as full citizens.” Even as explicit racial and gender criteria have been removed, exclusion from the category of full citizenship has been justified through arguments of moral inferiority and social deficiencies.

Because law is written in universal language, the normative qualifications for full citizenship rights are often obscured (Minow 1990). Rights qualifications are implicit ideas of deservingness that, even though not codified, judges and legislators use to guide decisions over who should be granted rights. For example, Failer (2002) investigated what made the mentally ill unfit for full rights. She found that people were deemed unqualified if they were perceived to be a threat to themselves or others, maintained poor family ties, or were unable to function in the economy. These qualifications, however, are implicit. Kirkland (2008a) argues that behind social and legal categories are distinct logics of personhood that make sense of how particular forms of difference should matter in law. Such ideas, she claims, exist as ordinary, commonsensical notions of difference and as the basis of legislative and judicial rule making (p. 3). These conceptions of difference align with dominant constructions of qualified subjects. Indeed, Kandaswamy (2008) found that the same-sex marriage movement led with claimants who fit a rational, disciplined and white image of a rights-bearer, which diminished alternative political claims and subjectivities.

In short, when asking for legal recognition, groups must subvert constructions of moral inferiority and present deserving political subjects that align with dominant values. This is

particularly difficult for groups that are unable to meet dominant values or are perceived as “choosing” their stigmatized status – such as undocumented migrants, fat people, and people with criminal convictions. For such groups, anti-discrimination law presents one potential legal tool to address unequal treatment based on prejudice (Post 2000). Anti-discrimination rights claims ask courts or legislative bodies to recognize social categories that should not be used to limit access to goods and services, such as housing and employment. Kirkland (2008b: 427-428) describes the anti-discrimination framework in employment: “Is [the trait] a choice? If not, then is there evidence of group-based discrimination? Can people with this trait still do the job? Then maybe they should be included.” Widespread beliefs that weight is a personal choice and a sign of moral failing conflict with the logic of anti-discrimination law, which traditionally protects groups who are oppressed on the basis of some immutable trait (Kirkland 2008b). Fat rights claimants – like other groups who are blamed for their own condition – are limited in their ability to expand civil rights protections, constrained both by circulating discourse about fatness and the limits of anti-discrimination law.

Other groups, such as undocumented immigrants, have generally been unable to access civil rights protections due to their lack of legal standing. However, Nicholls (2014) found that despite an inhospitable political climate, DREAMers successfully argued that some immigrants should be granted rights to legal status. Undocumented youth presented themselves as deserving subjects who embraced national values of hard work and self-determination. Symbols of American-ness helped distance undocumented youth from the racial stigma of immigrants in the United States (Nicholls 2014:30). Importantly, DREAMers’ claims also hinged on their lack of choice in the decision to migrate, which countered constructions of migrant illegality (De Genova 2004). In part, the circumstances of their migration – being brought into the country by

parents – made young undocumented immigrants more deserving of legal protections. The trope of “no fault of their own” lent legitimacy to the movement, but also drove a wedge between “deserving” and “undeserving” immigrants, casting non-DREAMers as un-American and responsible for their undocumented status.

While DREAMers found moderate success mobilizing around a legal status, people with convictions cannot easily distance themselves from choice and stigma. “Criminals,” Michelle Alexander writes, “are the one social group in America we have permission to hate” (Alexander 2012: 141). As a social class, criminals have been seen as the sole agent of their criminality and have historically been excluded from the benefits of full citizenship (Manza and Uggen 2004). Post-incarceration, the legal status of a convicted felon or misdemeanant entails a range of formal and informal restrictions on civil rights (Love, Roberts, and Klingele 2013). A felony conviction, Justice Earl Warren wrote, “imposes a status upon a person which not only makes him vulnerable to future sanctions through new civil disability statutes, but which also seriously affects his reputation and economic opportunities” (Justice Warren quoted in Love 2011). Legal and social exclusion is particularly concerning given the growing and racially disproportionate population of people branded with a criminal record.

Sociologist Mary Waters (2016) hypothesizes that legal exclusion is the newest technology of racial repression. Waters argues that race is now a thoroughly suspect classification and civil rights law generally protects racial groups from discrimination. However, undocumented migrants and people with convictions are both heavily racialized groups who lack legal standing. Because legal statuses disproportionately affect racial minorities, they effectively lock certain groups out of citizenship rights. Carried to the extreme, “it begins to look like legal apartheid, but an apartheid based not on race, but on legal status” (Waters 2016). Like Alexander

(2012), Waters contends that legal statuses may act as proxies for racial exclusion that fly under the radar of colorblind jurisprudence. Reforms to this system would require changing how legal statuses are considered under law. Yet crime has historically entailed the loss of full citizenship rights. Seen through this lens, American carceral expansion presents a novel challenge: with an increasing population denied full citizenship, how should law define people with criminal histories and what protections, if any, should they be granted?

MASS INCARCERATION AND CRIMINAL RECORDS

After decades of stability, the American justice system experienced unprecedented expansion from the early 1970s through the mid 2000s. In 2015, over 6.7 million people were under some form of correctional supervision, accounting for 1 in every 37 adults (Kaeble and Glaze 2015). The effects of this growth have not been evenly distributed. The prison population is largely composed of poorly educated men of color; blacks are incarcerated at more than 6 times and Hispanics more than 3 times the rate of whites (Travis, Western, and Redburn 2014). It is the stark racial disparities – which cannot be explained solely by differences in offending by race – that has prompted scholars to understand mass incarceration as devastating to poor communities of color (Western 2006) and, at worst, a new system of racial oppression (Alexander 2012; Wacquant 2001). More than the growth of prison populations, accretive expansion of criminal justice institutions encompasses “not only the country’s vast archipelago of jails and prisons, but also the far-reaching and growing range of penal punishments and controls that lies in the never-never land between the prison gate and full citizenship” (Gottschalk 2016: 1).

Once released, former prisoners join the growing ranks of people with some form of a criminal record. Each year over 600,000 people are released from state and federal prisons (Carson and Anderson 2015). Racial disparities in incarceration rates are reflected here: while felons and ex-felons make up 7.5 percent of the total adult population, 22.3 percent of black adults have been convicted of a felony (Uggen, Manza, and Thompson 2006). If misdemeanors and arrests without convictions are included, a quarter to a third of all adults has some type of contact with the justice system (Bureau of Justice Statistics 2014; Rodriguez and Avery 2017).

Conviction, particularly of a felony, entails a range of civil penalties that hamper re-integration and limit social mobility for a continually expanding population of “internal exiles” (Demleitner 1999). Depending on the jurisdiction, a felony can permanently deny someone the right to vote, serve on a jury, or run for office (Kalt 2003; Uggen and Manza 2002). Certain convictions restrict access to public housing, food stamps, student loans, disability benefits, and some professional licenses and occupations (Alexander 2012; Love et al. 2013; Mauer and Chesney-Lind 2003). No longer just an consequence of social ills, criminal justice involvement itself plays a causal role in a host of negative outcomes, including unemployment, depressed wages, homelessness and recidivism (Haney 2008; Uggen 2000; Western 2006).

Unlike most European countries, American commitment to open courts and unique interpretations of First Amendment protections makes criminal records, even arrests without conviction, indelibly public. Concern over legal liability and a booming commercial records industry has made criminal background checks the norm in employment and tenant screening (Cain 2003; Glesner 1992; Jacobs 2015; Thacher 2008). These evaluation techniques make criminal records visible in market evaluations, such as job and rental housing applications, where negative constructions of people with records signal untrustworthiness or danger (Pager 2007).

Records now serve as what Fourcade and Healy (2013) call an “exclusion classification” in market assessments, markers that prevent or limit access to goods and services. As Pager (2003: 942) writes, “the ‘negative credential’ associated with a criminal record presents a unique mechanism of stratification, in that it is the state that certifies particular individuals in ways that qualify them for discrimination or social exclusion.” Without legal standing, discrimination based on a conviction is legal. Subject to legal exclusion with no means of redress, people with convictions fall under the “elaborate gradations of citizenship” created by the carceral state (Gottschalk 2016: 242).

Until recently, laws pertaining to criminal records have largely excluded people with criminal histories from the community of full rights-bearing citizens. Since many people with criminal backgrounds are denied entry into labor and housing markets, recent legislative efforts have targeted job and rental applications as sites of reform. While some researchers have begun examining the material outcomes of these laws (Agan and Starr 2016; Doleac and Hansen 2017), little attention has been paid to the laws themselves and the political struggle to define what criminal records mean and how they are used. This is surprising given that political constructions of people with criminal records are central to these policy changes (Schneider and Ingram 1993). Attempts to forge a new direction for legislation around criminal records requires reformers to articulate compelling logical and moral arguments in support of laws that would protect people with records. By challenging the often-unspoken assumptions behind existing laws and practices, reform efforts attempt to re-construct the public meaning of criminal records.

At the center of debate in Seattle is a housing code compliance law (the Fair Chance Housing ordinance) that, if passed, would prevent both public and private market landlords from considering a conviction more than two years old and, within the first two years, mandate an

additional, individual evaluation in which the applicant can present evidence of positive behavior and stability. Anchored to the very real prospect of new state-mandated practices, the policy debate urges supporters and opponents to marshal compelling arguments about the proper understanding of criminal records and what should be done about them. As Gusfield (1994[1981]) has shown, public debate crystalizes cognitive and moral judgments that reflect back to the public a framework for interpreting and solving collective issues. In this thesis, I investigate how reformers and opponents construct political claims about the meanings of a criminal record and the duties of the state and the private market in rolling back mass incarceration.

METHODOLOGY: AN ETHNOGRAPHIC CASE STUDY OF POLITICAL DEBATE

Using Burawoy's (1998) extended case method, this thesis presents a strategic case study to understand how political actors construct novel political claims on behalf of people with criminal histories. Local conflict over the meanings of a criminal record and the duties of the state and the private market in rolling back mass incarceration is occurring in the context of national uncertainty about criminal justice. Building on theories of rights-claiming, this thesis turns attention to how political and legal contexts both limit and enable constructions of deserving subjectivities and social responsibility under the law.

Seattle offers a compelling context to study these claims. First, due to Seattle's liberal political climate, advocates' claims about the problems surrounding criminal records, such as those about racial inequality, will likely find a receptive audience.¹ Unlike in more conservative

¹ Seattle's Mayor and City Council welcome legislative proposals that might seem radical in other cities. For example, in employment, Seattle's \$15/hour minimum wage policy was first in the country. In 2016, Seattle City Council turned attention to renter protections, passing very progressive two housing laws – protecting source of

environments, such as the Washington State legislature, advocates have some political space to argue for criminal records reform. Second, the proposed Fair Chance Housing legislation extends to private market landlords. Similar policies in other major cities, such as San Francisco, only apply to non-profit housing providers who are subject to pressure for city government in ways that market actors are not. Since Seattle's proposed law would extend legal protections farther than most comparable housing laws, debate includes different stakeholders. Private landlords are involved in shaping the law and offer market-based critiques – perspectives that are not present in other political debates. As such, political debate in Seattle is both expansive – advocates are able to make strong claims on behalf of people with records – and inclusive – private market actors have a stake and voice in law-making. Debate in Seattle tests the extent to which advocates can construct positive claims for legal protection.

This project situates rights-claiming within citywide political debate over a proposed ordinance. I analyze how reformers, city officials and housing representatives attempt to influence the Fair Chance Housing law. I employ what Tilly (2006: 410) calls political ethnography, which “brings field workers into direct contact with political processes instead of filtering that knowledge through other people’s testimony, written records, and artifacts of political interaction.” Data for this study come from 1) non-participant observation of all meetings and events convened specifically around criminal records and housing, 2) in-depth interviews with core political actors who had a role in shaping the proposed law, and 3) archival data, including video recordings of past events and City Council meetings, and letters, reports,

income and limiting the move-in fees landlords can charge – that drew cheers from tenant advocates and anger (and a lawsuit) from landlords.

² A group of landlords sued the city over another landlord-tenant law, which requires landlords to rent to the first qualified applicant. The complaint in *Yim et al. v. City of Seattle* argues that the city is unconstitutionally violating property rights by taking away the ability to choose tenants.

³ Not all landlords constructed people with records as deserving. For example, at a Fair Housing training for landlords in February 2017, some individual private landlord attendees questioned the premise of protecting

newsletters, publications, and email correspondence related to laws and legislative proposals related to criminal records.

Between November 2015 and May 2017, I observed meetings, forums, and trainings (ranging from an hour and a half to three hours) about housing and criminal records, including three City Council meetings, two trainings for housing providers run by the City of Seattle, ten reform campaign meetings, and five private stakeholder meetings. The project began with observations of meetings run by a coalition of activists and non-profit employees organizing a local campaign advocating for legal protections for people with convictions. This group, called the Fair and Accessible Renting for Everyone (FARE) Coalition, met between Fall 2015 and Spring 2017. In the meetings, the campaign worked to coalesce a set of political demands, develop advocacy strategy, and plan for political action. Membership in the FARE campaign fluctuated, and no two meetings had the same composition. Although the group's four leaders – all employees from local non-profits – were committed to an open, horizontal organizing process, variable attendance meant that these leaders played an outsized role in the overall campaign. FARE meetings provided a setting to observe how non-city officials understood criminal records, identified causes of the problems people face in housing, and imagined policy solutions. Campaign meetings also revealed how activists thought about the political challenges they faced and developed reform strategies.

The study expanded in Summer 2016 when I was granted access to private policy meetings organized by the Mayor's office. Fitting his political style, Mayor Murray convened the Fair Chance Housing Committee (FCHC) to provide input into and ultimately reach some form of consensus on legislation addressing barriers to housing. Run by the Office of Civil Rights, the taskforce was composed of 18 members: private landlord representatives, affordable housing

providers, city officials, and representatives from criminal justice, homelessness, and tenants' rights organizations. This group met six times (in two hour meetings) between 2016 and early 2017 and allowed members to provide input into a draft ordinance that was submitted to the Mayor's office for review in February 2017. I was granted access to the meetings in summer 2016 and attended the final five of six meetings. During meetings, FCHC members debated the importance of background checks, what criminal records mean, the content and extent of regulation, and the appropriate enforcement mechanisms. Importantly, these close-doors meetings provided a window into the deliberation process. FCHC meetings allowed me to observe the central claims participants articulated as well as points of consensus and conflict.

As a non-participant observer, I had no control over how conversation unfolded in FARE and FCHC meetings, allowing participants to discuss the issue on their own terms. However, the format of these meetings – group deliberation occurring within time constraints – meant that participants raised concerns and made definitive statements without having much time to develop the motivation or logic behind such thoughts. I therefore used in-depth interviews to clarify the claims political actors were making and understand more deeply the justifications behind them. In order to identify the central topics of debate, I analyzing my field notes inductively. The principle themes that emerged – what a record means, understandings of housing, social responsibility, and potential solutions – provided the core structure for interviews.

To examine complex understandings of the issue I conducted 16 in-depth interviews with central political actors. Twelve participants were initially recruited from the FCHC and FARE groups. Because group members either self-selected (in the case of FARE) or were selected by the Mayor's Office and the Office of Civil Rights (FCHC), the two settings together contained many of the most active people working on the issue. For the FCHC, I interviewed members who

attended at least half of the meetings. Since membership in the FARE group fluctuated, I interviewed the group's four leaders. Two participants were part of both groups. To get a sense of other people actively involved with the issue politically, but not a part of either group, I asked each respondent who else had a hand in this policy. I then contacted people who were mentioned by at least two others. The remaining four participants were identified by respondents as other key actors working on the issue. Of the 16, three represent private or affordable housing providers, five work for the city, and eight represent criminal justice, homelessness, and housing non-profit organizations. All participants were given pseudonyms.

Interview topics were largely developed from the observations. I asked participants about their understanding of the issue, what a criminal record means about someone, and their thoughts on proposed and ideal solutions. To help pinpoint argumentative logic, I posed opposing claims and asked participants to respond to or counter those claims. I also asked about their thoughts on the unfolding debate and political strategy. To examine how participants thought about the issue in general, I asked a series of open-ended questions about the specific law in Seattle as well as more general thoughts on criminal records. To this end, I asked participants how this specific issue emerged in city politics, why it is under debate now, and what is at stake with this law.

To analyze political actors' claims and rationales about criminal records, I draw on the social movement concept of framing (Benford and Snow 2000; Gamson and Modigliani 1989). Framing offers a lens through which to analyze the discursive construction of policy issues, adapting Goffman's (1974) concept of a frame as a cognitive sense-making process applied to collective, public concerns. Frames are relatively cohesive "interpretive packages" that render issues meaningful – they identify the problem as well as its causes and solutions. In this sense, political debate can be seen as "a symbolic contest over which interpretation will prevail"

(Gamson and Modigliani 1989:2). Similarly, Steinberg (Steinberg 1999: 751) suggests thinking in terms of discursive repertoires, which focus attention on how meaning is created “interactionally with opponents and targets through a process of conflict.” These discursive repertoires are part of the cultural “toolkits” that city actors selectively draw on to make sense of criminal records as a matter (or not) for politics (Swidler 1986). Political actors, then, rely on frames not only to make sense of the issue at hand for themselves, but also to present compelling narratives that support particular policy solutions. In the end, four primary frames emerged – fair chances, racial equity, government overreach and risk. As a part of these frames, I coded data for primary arguments, values, definitions of criminal records, housing, and solutions. Two themes emerged as central focal points of debate – definitions of housing and social responsibility, and what a criminal record means.

BACKGROUND: THE EMERGENCE OF CRIMINAL RECORDS REFORM IN SEATTLE

Citywide debate about the legal and social status of criminal records began in earnest in late 2009 when group of women from a homeless transitional housing organization brought a set of complaints about criminal records to the city. Reflecting on the initial complaint, Mia, a city official said, “we literally got a phone call, I got a phone call from a woman who ran a social justice peacemaking circle as a part of Sojourner Place transitional house...and so their biggest concern was housing, and the woman just literally said, why can’t we have this protection?” The women claimed they had all repeatedly struggled to secure stable housing and employment. Framing the issue in terms of punishment, one of the women said at an early public meeting, “it feels like I’ll never stop being punished for what I did” (Madrid 2010).

Seattle's Human Rights Commission and the Office of Civil Rights took the baton and, building on the initial claims, drafted a legislative proposal that added convictions to the list of protected statuses covered by the city of Seattle's anti-discrimination law. The proposal made exceptions for certain crimes (serious violent offenses, theft, and drug manufacturing) and allowed both employers and landlords to deny applicants if there was a direct relationship between the conviction and employment/tenancy (Proposal to Add Anti-Discrimination Language to Seattle's Municipal Code Regarding People with Arrest and Conviction Records, author's records). The Office of Civil Rights released the proposal for community input and hosted two public forums before submitting the draft to the Mayor's office. Although there was some public support for the proposed ordinance, the attempt to broaden existing anti-discrimination law to include protections for people with criminal convictions sparked vigorous opposition.

Although Seattle's anti-discrimination code does protect some mutable traits (marital, parental, and military statuses), criminal records do not easily fit an anti-discrimination format, which seeks to protect traits understood as deserving. Opponents argued that convictions were nothing like the traits protected under anti-discrimination law and that criminals should not be granted special status under the law. They raised questions of choice, harm and deservingness: people chose to commit crime, they may have harmed others, why should they be granted extra protection? In response to the proposal, one of the landlord trade groups wrote:

The implications of making certain types of ex-offenders a protected class is extraordinary and takes the debate about protected classes into uncharted territory. It is one thing to grant protected status because of something beyond one's control (race, ethnicity, class, sexual orientation, etc.), but quite another to grant it because of the (bad) choices one has made. The unstated premise upon which this kind of thinking rests is that one need never be responsible for the consequences of one's actions. (Criminals as a protected class white sheet, Rental Housing Association, author's records).

Seattle Times columnist Danny Westneat joined the opposition with an editorial titled “Ex-cons need to earn equality”:

Until now, anti-discrimination law was confined to things that go to the core of your being: race, color, sexual identity and so on... Crime is in no way like these others. It's not only a choice but a horrendous one that victimized society. For this reason, many ex-cons, even upon release, don't have the full rights of citizens. Many can't vote or own guns. Some are not entirely free, as they remain in some way monitored by the state. (Westneat 2011)

Beyond critiques of advocates' use of the anti-discrimination format, some opponents played on fear of crime and criminals. At the second public meeting for the proposal, one of the panelists, a representative from another landlord association, said the law “would result in a cruel hoax, attracting hopeful opportunities and migrations by sex offenders to the city – ‘hey let's go to Seattle, they rent to sex offenders.’ Whether it's true or not that would be the perception.”

In the face of these criticisms, then-Mayor McGinn refused to back a law that would have made people with records a protected class. Mia, who was heavily involved in the first effort recalled, “the Mayor wasn't willing to move forward with it, said there wasn't enough of a community story, enough community pressure to be able to cover himself politically, basically.” Unable to add convictions as a protected trait, advocates – now a collection of city officials, non-profit employees and activists – regrouped and approached the City Council with their claims. Instead of targeting city anti-discrimination law, advocates focused on changing how criminal records are used in housing and employment applications. The group's lobbying proved successful and City Councilmember Harrell took up the issue. At the time, however, housing proved too unpopular politically. Landlords once again organized in opposition. Describing his efforts, an attorney for one of the landlord associations said, “we were able to convince Harrell that housing and employment aren't the same. And you shouldn't be having one law that

regulates both in that regard.” Whether convinced that housing and employment were fundamentally different or pressured by landlord opposition, Councilmember Harrell eventually sponsored an ordinance addressing the use of records in employment alone, which passed in 2013.

The employment law forbids public and private employers from issuing categorical hiring bans (i.e. “no felons” policies) and prevents employers from asking about conviction status during their initial application screening. Under the law, employers may conduct criminal background checks, but only after qualified applicants have been identified. The law further requires that an employer justify rejecting an applicant with a record by linking the conviction in question to a legitimate business interest. In its structure, Seattle’s law mirrors other ban-the-box type laws that have spread nationally and it ranks among the strongest in the country as it applies to public and private employers (Rodriguez and Avery 2017). Following the passage of the 2013 Job Assistance Ordinance, a handful of activists and city officials continued to push for action on housing. In the subsequent two years, this group prompted the Office of Housing to pressure city-funded non-profit housing providers to re-evaluate and change their tenant screening criteria. As a result, many of the city’s affordable housing providers lowered screening criteria and instituted individualized assessments for applicants with criminal records. Individualized assessments allow rental applicants with convictions to present evidence of rehabilitation and stability – a process that would later become part of the proposed housing ordinance.

In 2014, advocates raised the issue of criminal records amidst political attention to rising housing prices. As part of the city’s major push to address housing issues citywide, Mayor Ed Murray organized the Housing Affordability and Livability Advisory Committee that eventually produced 65 recommendations design to help solve the city’s housing issues. A number of

advocates served on this committee and successfully made reducing barriers to housing for people with records the 6th of 8 pressing housing issues for the city to address. As a result of this effort, Mayor Murray convened a taskforce, the Fair Chance Housing Committee (FCHC), to discuss and provide input into a proposed ordinance. Run by the Office of Civil Rights, this stakeholder group was composed of eighteen members, including private landlord representatives, affordable housing providers, city officials, and representatives from criminal justice, homelessness, and tenants' rights organizations. This group met six times between 2016 and early 2017 and allowed members to provide input into a draft ordinance that was submitted to the Mayor's office for review in February 2017.

The Fair Chance Housing proposal forbids advertising categorical bans (e.g. "no felons" or "no violent felons" policies) and the use of arrests without conviction, expunged, sealed or vacated convictions, juvenile records and, importantly, any conviction over two years old. Within the two year "lookback" period, landlords must provide a legitimate business reason for denying a particular applicant, taking into consideration the nature, severity, and number of convictions, the time since conviction, the age of the individual and any evidence of rehabilitation and good conduct (Fair Chance Housing ordinance proposal, author's records). If passed, the law would be one of the strongest housing regulations in the country, limiting the use of criminal convictions to two years for both public and private landlords and requiring an individualized assessment within that time period.

The Fair Chance Housing proposal and the employment ordinance both continue to use an anti-discrimination framework – they seek to protect people with records by regulating how a record may be considered in decision-making – but avoid using protected classes. Mia, who played a major role in both the employment law and the housing proposal, said:

We're creating these things that are code compliance laws, essentially, or regulations. But they're not protected classes and we're moving into this new territory of investigations in those ways, and so coming up with language around that and how we call it – everybody hates regulation, we try not to use it with landlords, but that is what we're doing essentially. And it is an important distinction, because it's not the same thing as a right.

These types of laws do create protections for people with records, but are limited in a number of ways. First, criminal records are not protected outright. In the proposed housing law, it is only illegal to deny an applicant because of convictions older than two years. Second, if a landlord chooses to reject an applicant, they must demonstrate a nexus to resident safety and/or property. While the law lists what landlords should consider, it offers no guidance on what might be considered a legitimate reason for denial. For example, a relatively low-level conviction, like a misdemeanor theft conviction, could potentially result in a legitimate denial. The law, however, is still being crafted. As of this writing, the Mayor's office is reviewing the policy and meeting with landlord and tenant groups. The Mayor will then submit a bill to the City Council in hopes of passing legislation.

At the same time that this official stakeholder process was unfolding, the Fair and Accessible Renting for Everyone (FARE) coalition, an advocacy group composed of local non-profit employees and activists, organized in an attempt to pressure the city to adopt a robust ordinance protecting people with records. Although the group is open to anyone, meetings were hosted and led by employees from a tenants' rights and a legal aid organization. Citing the closed-doors legislative process organized by the Mayor's office, FARE has attempted to bring community members, particularly people personally affected by existing barriers to housing, into the decision-making and law-writing process. Membership has fluctuated over the year and a half since the group began organizing. The initial plan to submit a parallel legislation morphed

into a less ambitious advocacy goal. Now, FARE’s ultimate goal is to push City Council members to adopt legislation that would ban criminal background checks altogether.

Two landlord trade groups, the Rental Housing Association (RHA) and the Washington Multifamily Housing Association (WMFHA) have also been politically active on this issue. The RHA, in particular, strongly opposed the initial anti-discrimination proposal and helped defeat the earlier effort to tackle housing and employment together. Both groups had representatives in the FCHC stakeholder group, help organize their members in opposition to new regulatory policies, and are considered the leading voices of landlords in the city.

“ROUND PEGS INTO SQUARE HOLES”: LIMITED LEGAL PATHWAYS FOR REFORM

Advocates pursued nondiscrimination regulations – first the employment ordinance and now the Fair Chance Housing proposal – but other legal pathways exist for reforming the consequences of criminal records. This section examines the potential avenues for reform and describes why the current solution produces civil rights claims while other avenues do not. Although advocates in Seattle reacted to the particular context in Washington State, the national growth of other similar Fair Chance laws suggests that the constraints local advocates faced in Seattle apply elsewhere.

Advocates argue that people with criminal records are unfairly denied access to housing and employment because of their conviction status. Unlike many European countries, criminal records in the United States are considered a matter of public record (Jacobs and Larrauri 2012). Criminal history is typically made visible through the now-common practice of criminal background checks. In the housing search, commercial screening companies sell publically available criminal history information to landlords, who then choose how to consider such

information when evaluating applicants. Currently, a landlord may legally deny a rental applicant solely because of their record within seven years, although this is difficult to enforce beyond that timeframe. With the current legislative proposal, advocates target decision-making within the tenant screening process. However, the barriers records pose could potentially be addressed through different reform strategies. Various city, state, and federal laws regulate or enable the public creation, permanence, distribution, and use of criminal records. Each of these policy domains presents advocates with an avenue to reform the social impact of criminal records. Furthermore, each avenue of reform entails a constrained set of potential claims and legal tools. For example, attempts to change the public nature of criminal records might invoke a constitutional right to individual privacy over criminal history information.

Depending of which domain advocates attempt to reform, the problem of records can be one of information or identity. These two approaches give rise to very different political claims: while information-based reforms seek to eliminate or hide a conviction, attempts to reform the use of criminal records call into question their meaning. Put another way, the former strategy attempts to disavow convictions as an important trait, while the latter must construct a deserving person. Reformers in Seattle considered or pursued each avenue, culminating with the current housing code compliance law that regulates decision-making. Unable to systematically address the creation, permanence or distribution of records due to legal and political constraints, advocates were forced to confront criminal convictions as an individual trait instead of a piece of information. Rather than hiding or disavowing convictions, advocates attempted to construct people with records as deserving political subjects. To do so, they drew on an anti-discrimination critique of criminal records, which granted a format for constructing injustice claims, but also fundamentally limited potential claimsmaking.

Given that convictions are not inherent properties or inscribed on human bodies, simply getting rid of criminal records at their origin altogether would ostensibly eliminate all subsequent problems stemming from convictions. However, advocates have no legal pathways to challenge the public nature of criminal records. The Supreme Court has interpreted the First Amendment to guarantee a constitutional right to access criminal courts (see *Richmond Newspapers, Inc. v. Virginia* 448 U.S. 555, 1980). Similarly, Washington’s state constitution firmly protects the right to open access to court records. The state Supreme Court has interpreted Article 1, Section 10 – “justice in all cases shall be administered openly” (WA Const. art I, sec X) – to ensure that criminal records, as part of justice proceedings, remain accessible to the public.

Moreover, although legal pathways do exist to erase records – vacating and sealing – advocates report that this process is too difficult and time-consuming to constitute a meaningful solution to the problem. First, a particular record must be vacated and there are a number of eligibility requirements to doing so, including full payment of all LFOs. Then, a claimant must prove in court why sealing is necessary. Each felony conviction must be sealed in turn, and only one misdemeanor may be sealed. Ultimately, advocates decided that while efforts to seal records in the courts were important for individual claimants, they did not present a viable reform strategy. Madison, an attorney who worked on both individual cases and the larger reform effort, said vacating and sealing “wasn’t going to really address this issue, because so few folks qualified to vacate and seal.” She continued, “it’s almost impossible to make things go away, even if you take advantage of every sort of legal opportunity that’s available to you.” Even if a record is permanently sealed in court, the information may continue to be stored by commercial screening companies or on other online repositories. While sealing one record in court may be

important for an individual, the process is labor-intensive and does not address the widespread nature of the problem.

Advocates also considered, but ultimately rejected, using Fair Credit Reporting laws to try to change how records are distributed. In this context, a criminal record is considered a commodity purchased by landlords. Criminal background checks are regulated by federal and state laws, which generally mandate that records are accurate and cap how long after conviction records may be reported. Advocates quickly realized, however, that the federal Fair Credit Reporting Act pre-exempts all new state laws. Washington's FCRA is already stronger than federal law – it prevents commercial screening companies from reporting any conviction over seven years old – and changing state law would risk pre-emption, thus nulling the current statute. Despite Washington's FCRA, screening companies continue to violate the law. Since many are national and operate in different states, many simply do not follow laws in Washington. In 2013, the ACLU-WA also filed a class action lawsuit against a national screening company and won a settlement in which the company agreed to follow Washington law (*Wilson v. RentGrow*). While credit reporting lawsuits may deter national companies from reporting any and all criminal background information, Washington law still allows companies to report records within seven years of conviction.

Faced with the difficulties of open court and fair credit laws, as well as the limited scale of litigation, advocates pursued legislative solutions aimed at changing how criminal records are used. Madison articulated the shift in political strategy this way:

I personally came to the conclusion that we have to move away from this idea that records need to go away in order for folks to move on, and we have to embrace a vision where even with public acknowledgment of criminal history information, that doesn't become a branding scarlet letter. So that was when we moved towards doing a lot more policy and training work.

Since the state legislature in Washington is fairly conservative, advocates decided to focus their efforts on city law using an anti-discrimination critique of criminal records. For advocates, anti-discrimination law presents an existing legal format to address negative treatment based on certain traits.

However, as the backlash to the initial protected class proposal revealed, negative constructions of criminals clashed with efforts to make convictions a protected trait. Noah, an attorney involved in both the FARE and FCHC groups, expressed the challenges of legal reforms for criminal records: “the difficulty in the law is that you try and fit round pegs into square holes.” He continued:

The tool we have created is discrimination law and given that this is the most effective tool to promote the policy agendas that I think are a reality, I would say yes, that’s how we probably need to operate in this particular area. Or at least use that type of critique, that type of analysis. And so the legislation that I think we’re looking at is along those lines.

Given the limited avenues for reform, advocates nevertheless drew on an anti-discrimination *format* when constructing the 2013 employment law and the housing proposal: both regulations limit when and how criminal records may be considered, yet specifically avoid the language of protected classes and anti-discrimination codes. However, these regulations follow the structure of anti-discrimination law, which identifies particular traits as “suspect,” and define negative treatment based on those categories as discrimination, punishable under law. If passed, the Fair Chance Housing proposal would make differential treatment based on a record after two years illegal. Although the proposal would not alter city anti-discrimination code, it would nonetheless grant some anti-discrimination rights to people with records.

Although existing legal formats provide strategic tools for political action, they also fundamentally limit claimsmaking. Advocates’ use of a discrimination framework for

constructing policy solutions silences more radical claims many advocates believe in. Although advocates acknowledged the strategic importance of such a framework, some lamented the inability of the proposal to address structural inequalities. Once again, Noah captures this logic:

From my perspective, the people with power need to be willing have to give up some of that power in order to make us a more egalitarian society. And discrimination laws don't really get to that at a certain level...But, in this particular instance, we're talking about criminal records, like I said...the tool that we have is this discrimination type model and so that's the one we use. More appropriately would be for the city to simply say, look, we're gonna put in place the solid supports for people with records, we're gonna actually encourage, require landlords to bring in people with records into their household, we're gonna create housing for people with records and do it in a way that integrates them back into society. That, from my perspective, would be a more effective way for addressing this issue than simply saying, you guys can't say no.

Similarly, many advocates believe in a fundamental human right to housing. In FARE meetings, participants repeatedly claimed that denying people with records violated a right to housing. At an early meeting, one participant was adamant the group should avoid any merit-based arguments for housing (Field Notes 1/11/16). A number of FCHC members, including two city officials, also voiced support for a right to housing. To be sure, there is no model for claiming a right to housing. Yet there is likewise no space within a discrimination format for such claims – the current housing proposal would prohibit discriminatory treatment after two years of otherwise qualified rental applicants. Fundamentally, a discrimination framework prevents, rather than requires, action. As such, political claims in this format cannot offer structural critiques or push for currently unrecognized rights, such as a right to housing.

Moreover, as the strong opposition to the 2011 protected class proposal revealed, conviction status does not easily map onto a discrimination framework. First, civil rights claimsmaking based on conviction status is limited by the fact that criminal records are frequently used to justify denial from other rights. In other legal arenas, a conviction disqualifies

someone from otherwise granted citizenship rights and social resources. Second, beyond questions of choice and deservingness, convictions are not traits people identify with. Compared to other protected traits, the identity politics for convictions work differently. Whereas the model of rights claiming under an anti-discrimination framework seeks to re-frame and affirm a particular trait or identity, advocates primarily want to dismiss conviction status as a meaningful category. That is, instead of claiming worth and deservingness based on a particular trait, advocates attempt to create distance between the stigma of a conviction and the deserving subject.

In sum, efforts to use law to protect people with criminal records stemmed from political and technological realities that make convictions permanent and accessible. Since advocates were unable to make records disappear, they turned to a discrimination framework in hopes of making denials based solely on convictions illegal under certain circumstances. This format shifted focus to convictions as an identity trait rather than a problem of information or privacy. Convictions, however, clash with an anti-discrimination format. First, felony convictions already disqualify people from otherwise granted civil rights. Second, people want to reject conviction status, not claim it as a source of deservingness. Faced with the limitations of existing tools for political reform and the poor alignment between convictions and anti-discrimination law, advocates were forced to construct novel political claims for legal protection.

Given the poor alignment between convictions and anti-discrimination law and the backlash initial claims sparked, advocates reworked their rhetorical strategy and turned to regulations that avoided any mention of protected classes. Ella, a leading advocate who helped organize the initial effort said, “when we first started...we used a lot of facts and figures and talked about it as a civil rights issue and we got creamed in the media on that – felons with

special rights.” Advocates began using the language of “second chances” and “fair chances” after strong pushback about the dissonance between anti-discrimination law and criminality. Rather than civil rights claims grounded in inherent deservingness, advocates developed rhetorical strategies that drew on core values of justice, fairness and equality.

ADVOCATE AND LANDLORD CLAIMS: FRAMING THE PROBLEM OF CRIMINAL RECORDS

In this section, I describe how advocates and landlords frame criminal records and housing (see Table 1). Presenting arguments first by claimant helps reveal the narrative logic of claimsmaking. Next, I describe the core topics of debate and disagreement in turn. Since debate over the issue, seen most dramatically in the FCHC meetings, emerged in dialog between advocates and landlords, I present debates by theme in order to capture the ways political actors responded to each other.

Table 1: Claimsmaking Around Criminal Records

Element of Comparison	Advocates	Landlords
Central Rhetorical Frame(s)	Racial Equity & Fair Chances	Government Overreach & Risk
Main Argument	Barriers to housing are fundamentally unfair and lead to collective social problems, including racial inequality, homelessness, and decreased public safety.	A criminal record is a sign of greater risk. While the needs people with records have should be addressed, private landlords should not be forced to take on the burden and risk of providing housing.
Core Values	Fairness, equality, justice	Risk reduction, property rights
Defining Housing	Housing is a basic social need and should not be treated like a commodity. Housing will help stabilize people with records.	Housing is a business, conducted in terms of risk avoidance. Private landlords only provide housing; they are not equipped to provide additional services.
What A Criminal Record Means	A criminal record is not a meaningful trait. While it shows a past mistake, it is also part of structural harms and injustice. Moreover, a record is not related to tenancy.	A criminal record signals greater risk that a tenant will commit another crime, destroy property, not pay rent, or otherwise cause problems for a landlord.
Solutions	Government should ban the use of criminal records in rental housing evaluations.	Government should provide the re-entry services people with records need. If the private market is involved, government should mitigate risk through public-private partnerships.

Advocate Frames: Racial Equity and Fair Chances

Advocates frame this issue under two banners: racial equity and fair chances. They argue that because people of color are disproportionately affected by the criminal justice system, the negative consequences of a record will further racial inequality. Isabel, an advocate who works in homelessness policy and served on the FCHC, captures this orientation to the issue:

I think [what's] most important to call out is institutional racism and discrimination. I mean, as I mentioned, the stats are very clear about mass incarceration and disproportionality in arrests and convictions. And African-Americans are much more likely to have been in jail or have a criminal record. So, I think it's just really clear that discrimination occurs and the Office of Civil Rights has done a lot of testing and does see discrimination in the private market and everywhere.

Advocates draw on an anti-discrimination framework and, specifically, the legal concept of disparate impact to frame why criminal records are a problem for racial equality: blanket denials of renters with criminal histories will disproportionately affect African-Americans, Latinos, and Native Americans. Moreover, advocates appeal to Seattle's Race and Justice Initiative, arguing that as a city committed to addressing racial disparities, Seattle has a moral imperative to address the use of criminal records in housing.

Through the language of fair and second chances, advocates also make claims about criminal records and punishment. Denying people access to housing because of conviction history, they argue, amounts to excessive and continued punishment, and denies people the ability to successfully move past their conviction. The additional, invisible consequences resulting from a record – here, exclusion from housing markets – are unfair because people with records have paid their dues to society and deserve a second chance to lead a productive life. Noah articulates these ideas:

At a very broad level [the policy is] about attacking mass incarceration. It's about providing people a second chance. We have stigmatized people who have been convicted of crimes to such an extent that it has a now lifetime of consequences, essentially. It's also a part of a system that has made people who are low-income, uh, has destroyed in large measure their ability to pull themselves out of their economic circumstances.

This logic suggests that people with records would be successful community members if given the chance, but current exclusionary practices deny them the opportunity to find safe housing and move forward from their past. With the language of fair chances, advocates point to structures and practices that limit people's inherent capacities to move forward from past actions:

Everyone deserves a fair chance to achieve their full potential. We all grow and change over time, and we all need an opportunity to start over when things go wrong. To foster rehabilitation we must provide conditions that allow all people to develop, to rebuild, and to reclaim full responsibility for their lives. (Fair Chances Strong Communities – FARE report)

The host of negative outcomes that plague people returning from prison – recidivism, homelessness, poverty – are thus primarily products of social exclusion, not any inherent, individual quality. Through this rhetoric, advocates appeal to salient values, while also subtly undermining negative assumptions that people with records are the source of their own problems.

Through these two central narratives, advocates describe the source of the problem in structural terms: institutional racism and the related stigmatization of people with records.

Madison, one of the attorneys who worked heavily on the earlier reform efforts, captures these ideas. Since the criminal justice system is biased, she argues, criminal justice involvement should be seen:

not as this sign of intrinsic and continued badness, but as the product of social and political forces that act upon people, and act upon particular people in particular ways. And that's not to say there isn't agency in some way, right, but that simply labeling someone a felon is a really simplistic way to approach this issue.

As part of this critique, advocates claim everyone commits crime, but only some people are caught. Early in the campaign, the FARE campaign discussed inviting Emily Baxter to Seattle to share her art-advocacy project *We Are All Criminals*, which displays photographs of people holding written signs sharing various crimes they had committed, but for which they were not caught. Although not used, this general strategy seeks to disrupt the stark separation between criminals and everyone else. Fundamentally, advocates believe that convictions are arbitrary markers that do not signal greater dangerousness or risk. Convictions only reveal what someone was caught for; they do not define future behavior. Having a record, advocates conclude, is more a product of history and policy than one of individual criminality.

Advocates claim that convictions, which they depict as arbitrary rather than meaningful, should not be used in the housing search. Given that housing is a stabilizing and helps alleviate many of the issues resulting from a record, denials based on criminal history further cycles of recidivism and poverty. Since records, on their own, do not predict future behavior and access to housing is crucial for successful reintegration, the law should forbid criminal background checks. Advocates acknowledged the difficulty in passing such a law and claimed that if the law had a lookback period, it should be as short as possible.

As Nicholls (2014) and others have found, in order to be seen as deserving of rights, stigmatized groups must distance themselves from negative meanings and responsibility. DREAMers accomplished this by personifying American values and arguing they had no choice in coming to the country. Unlike DREAMers, choice presents a significant challenge for people with records. During the protected class proposal, advocates struggled to avoid the connection between a negative choice and crime. Advocates made two rhetorical moves in order to avoid this. First, by saying we all commit crimes, but only certain people get caught, they helped to

dilute what a record means and blur the division between “us” and “them.” Second, by crafting someone with a conviction as a victim of structural forces, they decrease agency and personal responsibility. By arguing that convictions are partially a product of bias in criminal justice institutions, advocates’ claims subvert the nexus of choice and crime opponents raised early on, helping to dilute the stigma of a record. Moreover, the racial equity and fair chance narratives move debate away from crime and dangerousness – the FARE campaign’s publication avoided using the words felon, offender, and crime – and point to the structural forces at the root of criminal records and the benefits that would come from changing current rules. Through these rhetorical frames, advocates pivot away from inherent qualities and choice by constructing people with records as victims of structural harms in need of government protection.

Advocates’ rhetoric has seen considerable success. The city has embraced the language of fair chances when referring to laws around criminal records. The 2013 Job Assistance Legislation was later re-named Fair Chance Employment and the Mayor titled the taskforce on housing the Fair Chance Housing Committee. The Mayor’s office has also adopted many of the primary claims advocates have made. In a press release announcing the creation of the FCHC, Mayor Murray is quoted saying:

Creating an affordable Seattle means we must have equitable access to housing for everyone. Too many of our residents face life-long barriers to housing due to their criminal histories long after they have served their sentences and paid their debt to society. Lack of fair access to housing can lead to homelessness and deeper dependence on public services. We must ensure everyone in our community has a fair chance to find a stable home.

The city’s adoption of the fair chance frame speaks to the salience of advocates’ claims. In official language, people with records are seen in positive terms – as a deserving, yet dependent group, rather than a deviant one (Schneider and Ingram 1993). Advocates challenged existing

constructions of people with records as scary criminals, and helped re-cast them as subjects worthy of government protection.

Landlord Frames: Government Overreach and Risk

Landlords argue that the proposed policy amounts to government overreach into the private market and housing provider's choice. Despite acknowledging that criminal records and re-entry are social problems, landlords oppose this law, arguing that a criminal records are important signals of risk and that the city is forcing the private market to solve what they see as a government responsibility.

In this narrative, the roots of the problem are a flawed criminal justice system that does not rehabilitate inmates and government failure to provide necessary re-entry services and supports. Within this narrative, landlords craft themselves as the victims of policymakers who are trying to put the responsibility for solving social problems on the private market. Benjamin, an attorney and representative for a landlord tradegroup, claims that a regulation on private landlords provides an easy out for local politicians:

Because it's easier politically, monetarily, to dump the problem on conventional landlords than to try to fund the social services necessary to help those people who are getting out of prison, to have the guidance they need.

Landlords claim the proposed housing law would force landlords to rent to people with convictions, which would require the private market to take on the government's obligation to provide re-entry services. Private landlords only provide housing and should be asked to offer other social services. As Oliver, an attorney representing another landlord trade groups contends, "what I worry about is that poorly drafted legislation will put an enormous burden on private landlords who are not equipped to handle these scenarios."

Additionally, landlords argue that although people with records should be provided housing and services, convictions are nonetheless markers of risk. From their perspective, a record indicates someone is more likely to harm other tenants, skip out on rent, or damage property. By limiting landlords' ability to conduct criminal background checks, they argue, the city would take away an important risk-assessment tool that currently helps landlords protect their property, staff, and other residents. By not being able to screen for an important risk factor, the law would force landlords to take on more risk. In doing so, the law would also open landlords up to legal liability for crimes that occurred on the property.

Concerns about costs and liability stem from landlords' primary orientation to this issue: risk. All housing providers thought about housing as a business and in terms of risk evaluation and mitigation. Landlords articulated an ever-present desire to keep costs as low as possible – for private market landlords, to maintain profits, and for affordable housing providers, to sustain their projects within a given funding model. In the rental process, the logic here is simple: evaluate applicants according to perceived risk and avoid potentially risky tenants or request risk-mitigation measures. Because they view criminal records as indicators of risk, landlords believe the proposed law would force them to take on greater risk without any mitigation.

Indeed, landlords claim the proposal would reduce their discretion in the screening and evaluation process. Even affordable housing providers, who supported the aims of the proposed law, voiced concern over regulation of the rental process. Ava, one of the representatives from a non-profit housing provider, articulated this feeling:

I'm a very progressive person and I hate it when people talk about government overreach, but all of a sudden I'm kind of seeing where the reach – I don't know if it's overreach – the reach of these is pretty, pretty heavily into the businesses that people have decided to do. Ya know, we're a non-profit doing it, but all those private owners of property it does seem like it's a huge – so many rules about how

you have to go about doing your business that aren't in place in a lot of other places, and I do understand where they're coming from.

For affordable housing providers, government rules and regulations create more work and therefore costs for organizations. Ava expressed concern at losing of autonomy, “I just don’t want them to mess with my stuff, that’s basically it [laughs], it’s no...I suppose I can move slightly, just, why would I want any more work that I already have?”

Finally, landlords argue that the law would infringe on their property rights – the “right to alienate” as Oliver put it. This line of argument is muted in political debate over criminal records – landlords rarely talk about their property rights in explicit terms – but it is a centerpiece of larger landlord-tenant disputes in Seattle.² Nevertheless, the ability to choose tenants permeated landlord claims. The law would reduce their decision-making capacity, thus rolling back private property rights. Oliver told me:

What's difficult now is that in attempting to make one person's right or access to fairness – or their right to do that – it's running against the grain of the other law. And making the natural, I'll say infringement or the natural overlap of the property owner's rights possibly more than the property owner wants to deal with. There are people at that table [the Fair Chance Housing Committee] and there are people in this city who would love to be able to pass a thing that says – and they're doing it piecemeal – is that you have to rent to anyone regardless of anything. If you choose to enter the housing market as a housing provider, you don't get to choose. And that would be, that's an extreme example, but we're getting there.

If the law, as proposed, were to pass, landlords argue it would not accomplish what advocates hope it will. Because it takes away a risk-mitigation tool and asks landlords to take on additional duties, landlord representatives argued Seattle landlords would either sell their property, which would cause rents to rise, or simply raise their screening criteria. Oliver warned:

² A group of landlords sued the city over another landlord-tenant law, which requires landlords to rent to the first qualified applicant. The complaint in *Yim et al. v. City of Seattle* argues that the city is unconstitutionally violating property rights by taking away the ability to choose tenants.

So what will happen, will be people will just stop using [a criminal background check] and when the market is good I'll just demand a 800 credit score. Because it's not about the criminal record, it's about my risk level, right? So if you don't have a 750 or above, I'm not renting to you. Because it's about protecting my property and my kids' college fund. It's a difficult nut to crack.

Landlords argue that their concern about criminal records has nothing to do with race or even criminal records. Since housing providers are primarily concerned with risk and they believe rental applicants with convictions pose greater risks, the proposed law would not facilitate access to housing because it does not offset increased risk.

In light of these concerns, landlords offer a few policy suggestions. If the Fair Chance Housing law goes forward, landlords want clear rules outlining which convictions they can deny applicants for and, most important, landlords want to retain the ability to reject applicants. In policy debates, landlords claim they would support a law that encourages landlords to rent to people with records as long as it left room for discretionary denials. One landlord representative, Oliver, pushed strongly for a public-private partnership, in which the city would take on the risk by linking tenants to social service workers and providing a mitigation fund in case a tenant destroyed the property or stopped paying rent.

DELIBERATION AND DEBATE: DEFINING HOUSING AND CRIMINAL RECORDS

Given the Mayor's public support and a City Council that recently passed a number of strong tenant protection laws, opposition to the proposal and advocates' claims comes from a defensive stance. Landlords are well aware of the political support and momentum behind the Fair Chance Housing proposal and hope to blunt the law's reach through lobbying and what they see as compelling counterpoints to advocates' claims. Yet, although private market landlords oppose the Fair Chance Housing proposal, they do not contest arguments that the criminal justice

system is racially biased or that people with records struggle to find housing. In fact, landlords acknowledge that people leaving prison are often unsupported in their efforts to successfully re-enter society. Landlords also decry the injustice of continued punishment, but pivot to oppositional claims. In interviews, Oliver and Benjamin, the two landlord representatives on the FCHC, both expressed support for the premise of the proposed law before immediately arguing against it:

Personally, I'm a lawyer, I think that if you commit a crime, you pay your time...you should be back in the game fully, right? It seems unfair to me to be put in the penalty box and then have skate taken away from you and let back in the rink and that everyone's shocked you don't skate so well, it must be your fault. Well, maybe not, maybe it's cuz you took a skate from you, everyone else has two skates and a stick. At the same time, you don't have a right as an individual person, regardless of whether you have a criminal record, to live wherever you want, because you just exist. (Oliver, emphasis added)

I mean I can certainly understand the fair chance, second chance issue here and that is an issue. I mean, I don't think it's fair to permanently or even for a long period of time penalize someone who has committed a criminal offense and done time in prison. But I'm very very concerned that it's gonna go just the opposite – no safe harbors, no – and ban the box. And you've got to take everyone. And that's not appropriate either. (Benjamin, emphasis added)

Even in opposition, landlord groups accept advocates' moral claims; none of the central landlord representatives argued against supporting or protecting people with records in the abstract.³ In doing so, they helped co-construct people with records as a deserving group. Instead of demonizing people with records, opposition to the law was framed in terms of property rights, private market responsibility, and risk.

In the resulting political debate, landlords and advocates competed to prove or otherwise convince their opponents, elected officials, and the public that their framing of the issue was

³ Not all landlords constructed people with records as deserving. For example, at a Fair Housing training for landlords in February 2017, some individual private landlord attendees questioned the premise of protecting “murderers and rapists” (field notes 2/1/17). However, landlord trade group representatives, who were actively involved in shaping the policy and have the Mayor's ear, all supported the motivation behind the law.

correct. Landlord opposition stems from two fundamental beliefs: people with criminal records pose a greater risk to landlords and housing is a business, not a right. These two core ideas clash with central assumptions in advocates' framing of the issue.

Defining Housing and Responsibility

Advocates define housing as a basic need that provides stability and security, improving outcomes for individuals and the city alike. Advocates refer to housing as a basic need or a social good. Granting people with records access to housing, they argue, will facilitate successful re-entry. Advocates conceptualize housing as a service, rather than a commodity. Understood in these terms, landlords bear a responsibility to facilitate easy access to housing. Amelia, an advocate who works on tenant issues, explained:

I also think when you're providing housing, you're providing the most basic thing that folks need. And I understand that people also have a business interest in it, but I think that, our priority has to be housing is a human right, and people's basic need to shelter. And yes we have a system in which a lot of that is private, but because is, it needs to be heavily regulated and we need to look out and make sure that it is equitable and everyone has access to it.

Even advocates who did not refer to housing as a right believed that by providing housing, landlords take on a social responsibility. During a Fair Housing training, a facilitator from the Office of Civil Rights told the landlords in attendance, "as a housing provider, you have a duty to reduce barriers and provide a fair opportunity to access housing." Definitions of housing as a social need imply an obligation for landlords to make housing as accessible as possible, to lower screening barriers. This clashes with landlord interests of making screening criteria as high as possible, in order to select the safest, least risky tenants. Moreover, while a central part of advocates' framing of the issue, there is no model for a right to housing or affirmative duties on the private market to provide housing.

Landlords counter these claims by defining housing in market terms: as a business or investment. Rather than a service, landlords see housing as a commodity subject to market forces. Oliver captures this approach to housing:

Like it or not where you live in a society where you have to pay for the stuff you get and life isn't fair, some people are born with more money than other people and more opportunity. And the arguments put forward about housing rights, would just seem silly if we put them forward in other venues. Do I have a right, a right, to Seahawks season tickets? Don't they play for my city? No you have to pay for that. You pay for stuff and the more money you have or the more access you have to that stuff, the better stuff you get. That's just a fundamental function of our American society.

Landlords push back against the notion of social responsibility. Like any commodity, access to housing is not guaranteed, but is instead determined by one's qualifications.

For landlords, rental applicants are assessed according to their potential risk. As business owners, landlords should be able to choose how to mitigate risk, as long as those tactics are non-discriminatory. Oliver defined housing as a business, conducted solely in terms of risk:

When you rent to someone it's a business call. And every business call is about risk. It is. And I feel like most of the people at the [FCHC] and this is because the rental industry is perceived as making so much money right now, figures, well, too bad so sad, the landlords will just suck up that risk. And it's a miscalculation. Because they won't. That's not what business people do. I'm not in the business to suck up other people's risk.

Landlords argue the proposed law would take away an important indicator of risk. From this perspective, tenant screening is a risk-assessment tool. By checking an applicant's income and background, landlords hope to select the safest option: someone with consistent income, good credit, clean criminal and eviction history. Landlords interpret these qualities as indicators of whether an applicant will pay rent on time, take care of the property, follow rules, and get along with other tenants. As owners of a commodity, housing providers should be able to decide who occupies their property, as long as that decision does not run afoul of Fair Housing law or local

anti-discrimination measures. Since landlords claim a record is a legitimate, nonracial indicator of risk, the proposed law would infringe on the free choices that the market and private property are built on.

Within this argument, property owners are not obligated to address social issues.

Landlords argue they evaluate potential tenants solely in terms of risk, not along any social or moral considerations. The proposed law, they claim, inappropriately combines morality and risk.

Oliver: If what you want to do is try to ameliorate the moral and ethical problems that we have, from the criminal justice system, which means that you convince people that that risk mitigation tool isn't needed. And the way you do that is by proving it to them.

Interviewer: Instead of taking that tool away?

Oliver: If you take the tool away, you're not gonna change anyone's mind. Right? You're not changing anyone's mind.

The proposed law would put the risks involved in fixing the criminal justice system onto private actors, who have no duty to provide for the collective good. Oliver continues:

What law's function is, is to allow the participants in this economic ecosystem to know what the law is and order their affairs accordingly. And what this law's attempting to do is to make us order our affairs in a moral structure. You can't litigate morality.

In this statement, as with larger landlord arguments, Oliver separates morality and risk as distinct value systems. Without degrading moral considerations, Oliver argues that business is not beholden to moral codes. As a business, rental housing is conducted in terms of risk – conceived here as objective and amoral. The private market bears no responsibility to address larger social issues, especially if doing so would increase landlords' risk.

In response, advocates reframed the responsibilities of the private market. They argued that landlords, as business owners, have a duty to conduct business in a non-discriminatory

manner. This turned the logic of private markets into arguments in support of the proposed law.

Madison once again articulates these arguments clearly:

We have anti-discrimination laws for a reason. And being a private landlord and profiting quite handsomely off of a rental market means that you need to abide by basic social values. And one of those basic social values is non-discrimination. And non-discrimination doesn't mean you in your heart of hearts are not a racist. Non-discrimination means that you structure your business, from which you profit, which the city protects, in ways that support our shared values. And our shared values have determined that we're not going to erect arbitrary barriers that have the effect of discrimination. So if your barriers are arbitrary and if they have the effect of discrimination, then you either need to comply with the law and get with the social program or then you don't be a landlord.

In this logic, the city has a responsibility to remove arbitrary barriers that create harmful individual and collective costs. Yet landlords argue that criminal records are not, in fact, arbitrary markers – they are important markers of risk that landlords should be able to consider.

What a Criminal Record Means

Disagreement over what a record means was at the heart of political debate. Advocates argue that a conviction itself is only a marker of past actions and discriminatory enforcement of the law and is therefore not related to tenancy. While opponents accept that criminal records present a social problem, they disagree that a record is an arbitrary marker. Instead, they argue it is an important signal of risk landlords should be able to consider when evaluating rental applicants. In the absence of definitive data – there is no social science evidence that affirmatively supports advocate or landlord claims – the two sides could not come to consensus.

In the context of tenant screening, advocates argue that a criminal record is not a meaningful trait. They claim it merely shows that someone was caught for some past mistake. Emma, an advocate who works directly with people with convictions, typifies these claims, “[A record] doesn't tell me much, it just tells me what they got in trouble for, right? But for me, that

doesn't tell me anything else." Since a record alone only reveals past behavior, advocates argue it should not be considered in the housing search, especially when weighed against the negative consequences exclusion produces.

Landlords disagree with this formulation, claiming that people with records do pose a greater risk. In making these claims, landlords draw on generalized fear of crime as well as more specific logical connections between a conviction and future behavior. Citing previous experiences, Benjamin explains why landlords are concerned about people with records:

I'm speaking from my own experience here in dealing with landlords who've got problems because of druggies that have moved in under a variety of circumstances where a female rents the unit and she's really renting it for her boyfriend who's a drug user or seller. And then the next thing you know there are drive-by shootings and the landlord's saying "my god, what do I do now?" It doesn't happen a lot, but it happens often enough that they're very nervous, landlords are, about renting to someone who has a drug [conviction].

Not all landlord claims trade on fear, however. Other claims are more matter of fact, arguing that past criminal behavior is an important red flag. Oliver explains this logic:

Oliver: You're looking for like reasonable people who pay their bills on time and have a job, not because that they direct to race, because it shows that they can like follow the rules of society.

Interviewer: And that in some ways is the most important thing about the record? Is that you have shown you can't follow the rules?

Oliver: Yeah, you've shown you can't follow the rules and you broke a rule that is massive. And that's why the 24 year old doing coke is probably really concerning to me, because it says you feel fundamentally, that this just doesn't apply to you. So what is gonna make you say, clean your refrigerator, so I don't get it back having it smell so bad I have to throw it away? Or just pay your rent late all the time, right? Or...you know what I'm saying?

Finally, landlords claim a record shows that an applicant is more likely to commit another crime, potentially against someone in the property. While a new arrest might prevent someone from paying rent on time, landlords are also concerned with the liability in this scenario. If someone

with a record harms another tenant, landlords argue they will be sued under negligent leasing liability. Private market landlords claim they should not be required to rent to riskier tenants. Since people with records pose greater risks, the proposed law would force housing providers to incur additional costs, liability and responsibilities.

Advocates challenge landlords to support their claims about risk with evidence. Constructions of greater risk are based, advocates claim, on assumptions and generalizations about criminality and character that are part of “the image of the ex-con who’s scary and violent,” as Ella put it. Fundamentally, advocates believe that criminal records are not related to successful tenancy. In support of this claim, advocates cite social science studies that show recidivism rates decline over time (Kurlychek, Brame, and Bushway 2006). Additionally, one advocate co-authored a law review article that reviewed studies of tenancy and records and found no evidence that criminal records alone predicted success in housing.

In response, landlords argue that recidivism statistics reveal increased risk. Although not all people with records will re-offend, recidivism rates do signal a propensity for criminal activity. Advocates dispute this, arguing recidivism rates are so high because people struggle to find housing and employment. One exchange, which occurred during a FCHC meeting between Mia, an advocate, and Benjamin, a landlord representative, exemplifies this disagreement:

Benjamin: This ordinance seems to ignore any and all studies of recidivism. I think that should be a factor landlords can look at.

Mia: I don’t agree, Benjamin. The studies find that after 3.8-7 years, there’s no difference, but those are based on situations where housing wasn’t provided.

Benjamin: How do you know that? Are you assuming they’re all homeless?

Mia: No, we don’t know. But there’s so much evidence that the period of recidivism will be shortened with housing. (Field Notes 1/24/17)

In the absence of clear data that proves or disproves risk, political actors argue back and forth about the true meaning of record. This debate ended in impasse, with advocates claiming there is no empirical link between a record and successful tenancy and landlords maintaining that a record is a legitimate indicator of risk.

Finally, political actors disagree about exactly who people with records are and how the criminal justice impacts them. Landlords claim that people with records need supportive services, such as drug treatment, mental health counseling or job training, in order to succeed. As with other claims, landlords pivot away from responsibility. People with records need help, but private market landlords, the argument goes, do not have the capacity to serve these greater needs. Benjamin captures these claims:

Benjamin: And you can talk to [re-entry service provider], they say in that first three year period, it's a struggle. These people don't, it's particularly the longer they've been in prison, they don't know how to live on the outside, they haven't done it for so long. So they need supervision and you can't expect a private landlord to do that.

Interviewer: So folks coming out, in your sense, should be housed with providers?

Benjamin: Someone who can provide the services necessary to ensure success for them. Because that's the biggest hurdle, I think. I mean if they fail in their first housing effort, then you've got an even bigger albatross around their neck. They need – we need to make sure to the best we can that their first attempt or first housing is a success for X period of time.

Claims about the needs of people with records are often made in sympathetic, paternalistic terms. Importantly, they build on critiques of the criminal justice system as a broken institution and align with pieces of advocates' claims. Although advocates claim a record, by itself, is not predictive of successful tenancy, many advocates agreed with landlords that people often need services after serving time. For advocates, these ideas were part of critiques of mass incarceration and the movement away from rehabilitation. For landlords, however, the fact that

incarceration can be a traumatic experience and inmates are not prepared to re-enter society serves as a potential warning sign. Interpreted through the lens of risk, critiques of the criminal justice system's failure to rehabilitate become further signals of risk. Even for affordable housing providers, who have lowered their screening criteria to increase access for people with records, critiques of the criminal justice system's failure to rehabilitate inmates stoke concern. Ava explained:

Well I do think that the whole purpose of the law is to not make people who have served their time pay again for having committed that crime. That's really the bottom line. And I really get that and I want it to allow for people to be able to show...that they are...that they have come through that system and, ya know, I mean I think of us get afraid of that system, cuz you hear that when you go into it, you come out worse, right? You come up, you didn't, you only committed this one crime, but you've been hanging out with these bad guys, you're gonna come out and you're gonna be worse, and that's sort of what the general culture says, right?

Advocates do not disagree with these statements, but instead claim that although some people with records do, in fact, need services, many are capable of renting and only need housing. The proposed law would only apply to otherwise-qualified applicants and simply seeks to remove barriers for applicants whose only discrediting marker is a conviction.

Landlord objections couched in the language of risk helped shift political debate away from the moral issues advocates raised and into a politics of risk, in which political actors competed to define what a criminal record means in terms of risk. Landlords deflected social responsibility by arguing the private market bears no duty to provide for collective problems. Social issues, such as re-entry and the problem of criminal records, are government responsibilities. Within this debate, people with records were no longer discussed in terms of the moral deservingness of a rights-claimant, but were considered under the market logic of risk assessment. This shift neutralized advocates' framing of the issue and helped lead to a stalemate,

with landlords and advocates unable to convince each other or reach a consensus. I will examine the divide between moral and market deservingness and the shift toward the latter in the conclusion.

CONCLUSION

In this thesis, I have explored an effort in Seattle to grant legal protections to people with criminal records. In doing so, I extend the socio-legal literature on rights claiming to a previously unstudied group and trait: people with convictions. Rights-like claims, I argue, are not an inevitable reform strategy for people with records. As a stigmatized trait created through law, convictions present advocates with a challenge. Not only does conviction status entail reduced citizenship rights, but records also act as negative credentials in market and personal evaluations (Pager 2003). Moreover, technological shifts and public records laws have made criminal records accessible and nearly inedible. Without civil rights protections, people with records have no legal means of recourse. While advocates in Seattle considered and attempted various reforms to the creation, permanence, and distribution of criminal records, legal and political constraints funneled reform efforts in an anti-discrimination critique of the use of records. However, conviction status clashes with notions of deservingness and choice underlying protected classes and anti-discrimination law. Faced with the limitations of existing legal pathways and political opposition to making people with records a protected class, advocates shifted strategy, targeting nondiscrimination regulations in labor and housing markets, and using the language of fair and second chances to discuss the issue.

Fair chance framing helped shift the terms of debate away from the past harms done *by* people with convictions to the structural harms done *to* them and the collective problems that

result from exclusion. Unlike other rights-based movements, these claims attempt to minimize the trait in question, not affirm its worth. Advocates worked hard to dilute the stigma of a record and blur the lines dividing criminals and law-abiding citizens. These claims constructed people with records as morally deserving not because of their trait, but because of structural harms, the injustice of continued punishment, and the collective problems that result from exclusion. In appealing to the salient values of fairness, equality, and justice, advocates helped shift people with records from a deviant group to be punished to a group in need of government protection.

Advocates' moral claims resonated with both the city and opponents alike. The city officially adopted the language of fair chances and reiterated many of advocates' central claims. Landlords likewise claimed that they believed in second chances and fairness. Indeed, in political debate people with records were discussed as a group who deserved protection and support. In deliberations over policy and interviews, landlords agreed that people with records were morally deserving subjects, but pivoted to arguments about risk and private market obligation. As private property owners, they should not be held responsible for providing services the government is obligated to deliver. Social and moral considerations, they claimed, do not apply to the private market, which operates solely in terms of risk. Landlord opposition framed in terms of risk shifted the terms of debate away from moral deservingness and into their metric of evaluation – market deservingness – where people with records are assessed in terms of perceived risk.

In short, as the debate transitioned from government recognition in general to the specific protections for people with records within the private market, advocates and landlords drew on competing “modes of valuing” (Espeland and Stevens 1998). As Fourcade and Healy (2007) write, “markets are the site of moral conflicts between social actors committed to different justificatory principles” (p. 302). The moral qualifications that undergird civil rights claims

simply do not align with the risk-based qualifications of market evaluation. Risk is a commensurating metric: it obscures context and empathic or moral considerations – precisely the qualities that motivate legal protections for people with records and other groups that experience stigma discrimination (Espeland and Stevens 1998). Espeland and Stevens write, “commensuration changes the terms of what can be talked about, how we value, and how we treat what we value” (p. 315). Landlords view risk as an objective, nonracial metric. While resonant values – fairness, equality and justice – may be leveraged in civil rights claims, the market appears deaf to such appeals. As such, landlords endorse the moral claims advocates make about people with records, while also maintaining that convictions signal risk and should be avoided. Within market evaluation, criminal records are only considered in terms of risk, with no reference to any of the moral qualifications advocates promoted. In the absence of clear evidence confirming or denying assumptions about risk, deliberation over the law reached an impasse.

Some advocates were convinced that landlord insistence that people with records pose a risk stemmed from deep-seated racism. While I do not have data to answer why landlords, in the final calculus, opposed the law, race certainly plays a role in this issue. Although landlord representatives acknowledged racial disproportionality and landlord bias in general, they largely avoided race in debate. But the connection between race and records is strong. In fair housing tests, the Office of Civil Rights found that Seattle landlords are more likely ask or inform black applicants about criminal background checks. Similarly, two city officials told me some individual landlords were not shy about opposing this and other housing laws in explicitly racist terms. But the danger of focusing exclusively on racism misses the central role risk plays, not just as a discourse, but as a way of seeing the world. Advocates presented what they considered

compelling evidence that records are not directly related to tenancy. However, without definitive proof, a risk-centric logic will tend toward risk avoidance – uncertainty itself is risky. Without minimizing the role race plays in this debate, it is important to highlight risk as a mode of valuing rental applicants that structures how landlords approach criminal records.

In maintaining that people with convictions are riskier renters, landlords draw on a mix of old and new rationales. On the one hand, landlords trade on familiar fears of crime and criminals – Benjamin’s story about the druggies and drive-by shootings reflects this clearly. On the other, landlords have adapted to the now-extensive critiques of mass incarceration, arguing that the failures of the criminal justice system, not any individual qualities of justice-involved people, create greater risk. Rather than seeing the injustice of the criminal justice system as motivation for renting to people with records, they interpret the failure of rehabilitation as a signal of further risk. This latter stance – the assumption that the criminal justice system fails to rehabilitate inmates – is communicated through supportive paternalism: we care about people with records and they should fundamentally have a chance to re-enter society, but private landlords simply are not equipped to provide the necessary services. Filtered through the risk-centric perspective of landlords, critiques of the criminal justice system become justification for further stigmatization. As victims of a flawed institution, people with records come out with pressing needs that the private market is not prepared or willing to support.

In this way, the fair chance framework only partially achieves its intended goal. Many advocates believe that as the general public and landlords come to understand the inequalities and failures of criminal justice system, they will also change their stance of people with records, allowing for an empathetic response. The fair chance frame appears to have helped produced an empathetic response, but does not assuage landlords concerns about risk. Moral deservingness

may function to legitimate civil rights claims and position people with records as politically deserving subjects. However, landlords operate from a risk-centric frame of reference, which has no moral or social obligation. Laws that are perceived to force landlords to take on more risk, even for legitimate moral reasons, will likely provoke opposition. As the landlord representatives warned, even if the law passes, Seattle landlords will simply tighten their screening criteria or will raise rents in order to maintain control over how much perceived risk they take on. In the realm of property rights and the market, risk appears to be the only compass. The discourse of risk, not morality or punishment, is the principle language of denial.

This case suggests that there is political and legal space, albeit narrow, to reconstruct people with records as deserving subjects and offer some legal protections. Although anti-discrimination law may not present a viable legal solution, nondiscrimination regulations might give people with records some legal avenues for claiming discrimination based on their legal status. However, because moral deservingness does not align with market interests, how far legal protections extend may be limited. While people with records can be seen as deserving in one context, that does not necessarily translate to the private market. Because moral and market deservingness are assessed along different metrics, landlords can accept and adopt fair chance rhetoric while also deflecting responsibility for accepting people with records into the private market.

REFERENCES

- Agan, Amanda Y. and Sonja B. Starr. 2016. "Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment." *U of Michigan Law & Econ Research Paper* 16(012).
- Alexander, Michelle. 2012. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Revised edition. New York: New Press.
- Benford, Robert D. and David A. Snow. 2000. "Framing Processes and Social Movements: An Overview and Assessment." *Annual Review of Sociology* 26:611–39.
- Burawoy, Michael. 1998. "The Extended Case Method." *Sociological Theory* 16(1):4–33.
- Bureau of Justice Statistics. 2014. *Survey of State Criminal History Information Systems, 2014*.
- Cain, Heidi Lee. 2003. "Housing Our Criminals: Finding Housing for the Ex-Offender in the Twenty-First Century." *Golden Gate University Law Review* 33(2):131–72.
- Carson, E. Ann and Elizabeth Anderson. 2015. "Prisoners in 2015." *Bureau of Justice Statistics*. Retrieved April 26, 2017 (<https://www.bjs.gov/content/pub/pdf/p15.pdf>).
- De Genova, Nicholas. 2004. "The Legal Production of Mexican/migrant 'illegality.'" *Latino Studies* 2(2):160–85.
- Demleitner, Nora. 1999. "Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences." *Stanford Law & Policy Review*.
- Doleac, Jennifer L. and Benjamin Hansen. 2017. *Does "Ban the Box" Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Histories Are Hidden*. Rochester, NY: Social Science Research Network.
- Espeland, Wendy Nelson and Mitchell L. Stevens. 1998. "Commensuration as a Social Process." *Annual Review of Sociology* 24(1):313–43.
- Failer, Judith Lynn. 2002. *Who Qualifies for Rights?: Homelessness, Mental Illness, and Civil Commitment*. Ithaca, NY: Cornell University Press.
- Fourcade, Marion and Kieran Healy. 2007. "Moral Views of Market Society." *Annual Review of Sociology* 33(1):285–311.
- Fourcade, Marion and Kieran Healy. 2013. "Classification Situations: Life-Chances in the Neoliberal Era." *Accounting, Organizations and Society* 38(8):559–72.
- Gamson, William A. and Andre Modigliani. 1989. "Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach." *American Journal of Sociology* 95(1):1–37.

- Glesner, Barbara A. 1992. "Landlords as Cops: Tort, Nuisance and Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises." *Case W. Res. L. Rev.* 42:679.
- Goffman, Erving. 1974. *Frame Analysis: An Essay on the Organization of Experience*. Northeastern University Press ed. Boston: Northeastern University Press.
- Gottschalk, Marie. 2016. *Caught: The Prison State and the Lockdown of American Politics*. Princeton: Princeton University Press.
- Gusfield, Joseph R. 1994. *The Culture of Public Problems: Drinking-Driving and the Symbolic Order*. 4. print. Chicago: Univ. of Chicago Press.
- Haney, Craig. 2008. "Counting Casualties in the War on Prisoners." *USFL Rev.* 43:87.
- Harris, Cheryl. 1995. "Whiteness as Property." Pp. 276–91 in *Critical Race Theory: The Key Writings*. NY: The Free Press.
- Jacobs, James B. 2015. *The Eternal Criminal Record*. Cambridge, Massachusetts: Harvard University Press.
- Jacobs, James B. and Elena Larrauri. 2012. "Are Criminal Convictions a Public Matter? The USA and Spain." *Punishment & Society* 14(1):3–28.
- Kaeble, Danielle and Lauren Glaze. 2015. "Correctional Populations in the United States, 2015." *Bureau of Justice Statistics*.
- Kalt, Brian C. 2003. "The Exclusion of Felons from Jury Service." *Am. UL Rev.* 53:65.
- Kandaswamy, P. 2008. "State Austerity and the Racial Politics of Same-Sex Marriage in the US." *Sexualities* 11(6):706–25.
- Kirkland, Anna. 2008a. *Fat Rights: Dilemmas of Difference and Personhood*. New York: NYU Press.
- Kirkland, Anna. 2008b. "Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement." *Law & Society Review* 42(2):397–432.
- Kurlychek, Megan C., Robert Brame, and Shawn D. Bushway. 2006. "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*" *Criminology & Public Policy* 5(3):483–504.
- Love, Margaret. 2011. "The Collateral Consequences of Padilla v. Kentucky: Is Forgiveness Now Constitutionally Required?" *University of Pennsylvania Law Review Online* 160(1).
- Love, Margaret Colgate, Jenny Roberts, and Cecelia Klingele. 2013. *Collateral Consequences of Criminal Convictions: Law, Policy and Practice*. 2013 edition. Washington, DC NACDL Press : Thomson Reuters.

- Madrid, Cienna. 2010. "Making Ex-Convicts a Protected Class." *The Stranger*, December 16.
- Manza, Jeff and Christopher Uggen. 2004. "Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States." *Perspectives on Politics* 2(3):491–505.
- Mauer, Marc and Meda Chesney-Lind. 2003. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York; York: New Press ; Signature Books Services.
- McCann, Michael. 2014. "The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era." *Law & Society Review* 48(2):245–73.
- Mills, Charles W. 2008. "Racial Liberalism." *PMLA* 123(5):1380–97.
- Minow, Martha. 1990. *Making All the Difference: Inclusion, Exclusion, and American Law*. Ithaca: Cornell University Press.
- Nicholls, Walter J. 2014. "From Political Opportunities to Niche-Openings: The Dilemmas of Mobilizing for Immigrant Rights in Inhospitable Environments." *Theory and Society* 43(1):23–49.
- Pager, Devah. 2003. "The Mark of a Criminal Record." *American Journal of Sociology* 108(5):937–75.
- Pager, Devah. 2007. *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press.
- Pedriana, Nicholas. 2006. "From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s." *American Journal of Sociology* 111(6):1718–61.
- Polletta, Francesca. 2000. "The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing, 1961-1966." *Law & Society Review* 34(2):367–406.
- Post, Robert. 2000. "Prejudicial Appearances: The Logic of American Antidiscrimination Law." *Cal. L. Rev.* 88:1.
- Rodriguez, Michelle Natividad and Beth Avery. 2017. "Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies." National Employment Law Project.
- Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven: Yale University Press.
- Schneider, Anne and Helen Ingram. 1993. "Social Construction of Target Populations: Implications for Politics and Policy." *American Political Science Review* 87(02):334–47.

- Steinberg, Marc W. 1999. "The Talk and Back Talk of Collective Action: A Dialogic Analysis of Repertoires of Discourse among Nineteenth-Century English Cotton Spinners." *American Journal of Sociology* 105(3):736–80.
- Swidler, Ann. 1986. "Culture in Action: Symbols and Strategies." *American Sociological Review* 51(2):273–86.
- Thacher, David. 2008. "The Rise of Criminal Background Screening in Rental Housing." *Law & Social Inquiry* 33(1):5–30.
- Thompson, E. P. 1975. *Whigs and Hunters: The Origin of the Black Act*. New York: Pantheon Books.
- Tilly, Charles. 2006. "Afterword: Political Ethnography as Art and Science." *Qualitative Sociology* 29(3):409–12.
- Travis, Jeremy. 2005. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. 1st ed. Washington, D.C: Urban Institute Press.
- Travis, Jeremy, Bruce Western, and Steve Redburn, eds. 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, D.C: The National Academies Press.
- Uggen, Christopher. 2000. "Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism." *American Sociological Review* 65(4):529–46.
- Uggen, Christopher and Jeff Manza. 2002. "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States." *American Sociological Review* 67(6):777–803.
- Uggen, Christopher, Jeff Manza, and Melissa Thompson. 2006. "Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders." *The ANNALS of the American Academy of Political and Social Science* 605(1):281–310.
- Wacquant, Loic. 2001. "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh." *Punishment & Society* 3(1):95–133.
- Waters, Mary. 2016. "Crime and Immigration: New Forms of Exclusion and Discrimination." *Issues in Science and Technology* 33(1).
- Western, Bruce. 2006. *Punishment and Inequality in America*. New York, NY: Russell Sage.
- Westneat, Danny. 2011. "Westneat: Ex-Cons Need to Earn Equality." *The Seattle Times*, March 5.
- Williams, Patricia J. 1995. *The Alchemy of Race and Rights*. 8. printing. Cambridge, Mass.: Harvard Univ. Press.

Zemans, Frances Kahn. 1983. "Legal Mobilization: The Neglected Role of the Law in the Political System." *The American Political Science Review* 77(3):690–703.