Economic Architecture Podcast

Fair Chance Hiring Series with Shawn Bushway

Episode 1 transcript

The following transcript has been edited for clarity:

Stuart Yasgur: I'm Stuart Yasgur, and this is Economic Architecture, the podcast.

Stuart Yasgur: Throughout the podcast, I've been using a key phrase that's one of the cornerstones of our work here at Economic Architecture. At Economic Architecture, we focus on addressing problems of historic proportions. How do we think about what these problems are?

Stuart Yasgur: Well, an easy way to think about it is if you were telling the story of our time, the story wouldn't be complete if you didn't mention the problems of historic proportions. For example, no description of the United States would be complete without acknowledging that there are approximately two million people incarcerated in the country today. That's the highest rate of incarceration in the world with a system that costs an estimated $182 billion annually.

Stuart Yasgur: Here at Economic Architecture, we conduct our research through the lens that every person deserves the opportunity to contribute meaningfully to society through work to support their families, and to build a stable and fulfilling life.

Stuart Yasgur: That's a premise that's challenged by many structural barriers posed to people who are formerly incarcerated, or people who have had contact with a criminal legal system that leaves them with criminal records.

Stuart Yasgur: These are records with the potential to overshadow the lives of more than 70 million people in the United States. It makes it harder to get jobs to secure housing and maintain financial stability. The impact of criminal records can be seismic regardless of an individual's skills, their background or their readiness to contribute, and it has a disproportionate effect on Black and Hispanic communities.

Stuart Yasgur: But fair chance hiring reforms are creating new avenues to change.

Stuart Yasgur: Fair chance hiring is the meaningful work being done to reduce the impacts on people with criminal records.

Stuart Yasgur: In the next several episodes coming every Wednesday, we break down the impact of fair chance hiring – how it affects formerly incarcerated individuals and their ability to build a life once they're out of prison; how institutions and workplaces treat individuals with records; and in line with our work, understand how structural innovations can best create new pathways to reshape the labor market and realign incentives to best serve the communities who need a more comprehensive, integrated system to transform their circumstances into an equal opportunity to a quality life.

Shawn Bushway: We all know that past behaviors is the best predictor of future behavior, right? So, that's a sort of a thing everyone kind of knows. And so, if you translate that into people with criminal history records, it sort of becomes once a criminal, always a criminal. But, that's not true, and it's not really even close to being true because most people, who offend, offend when they're young and then they stop.

Stuart Yasgur: In our Fair Chance hiring series over the next few weeks, we want to understand how this massive portion of the U.S. population that's been impacted by the criminal legal system is able to reclaim their access to basic opportunities as individuals.

Shawn Bushway: Only 30% of people who get convicted ever get convicted again. And so, we have this situation where the numbers that the government provides—perfectly reasonable numbers—but they're not the number that you need to answer the question if you are an employer or a landlord or whatever. Which is to say of the person that's sitting in front of me with a record, what's their probability of getting reconvicted? And it's nowhere near the number that you would guess.

Stuart Yasgur: Dr. Sean Bushway is a criminal justice specialist with a variety of research specialties, including the causal relationship between work and crime, and how criminal justice involvement impacts the lives of an individual over the long term.

Stuart Yasgur: He's currently a professor in the Department of Public Administration and Policy at the State University of New York at Albany.

Stuart Yasgur: The philosophical core of Shawn's work really highlights how many of us may be walking around with beliefs and implicit biases that may not be as based in facts as we think. In our conversation, Shawn shares some of the powerful misconceptions about human nature that impact so, much in a formerly incarcerated individual's life, from their access to employment, to housing, and their ability to reintegrate into society.

Stuart Yasgur: From debunking the myths of what it means to be a formerly incarcerated individual to removing outdated criminal records from one's history, the base for innovation has been set and there's a lot of work to be done.

Stuart Yasgur: By helping us understand what it means to have a record, Shawn illustrates how these myths are impacting people's lives and are reinforcing the barriers that are keeping people out of the labor market.

Shawn Bushway: The traditional, primary fact about crime is that it peaks around age 20 and then people stop going from there on. So, I may tell you that 30% of 35-year-old men have at least one adult conviction, which is true, right? But then I ask, well, how many of them are still offending?

Shawn Bushway: Well, not very many, because most of them were doing that when they were in their early twenties. In other words, the convictions happened earlier. So, you end up with these two sort of side by side facts, which is, if I'm going to look at people who are going to offend, looking in the pool of people with records is not a bad place to start.

Shawn Bushway: However, most of those people actually stop. And where this sort of gets complicated is that the federal government has some statistics that everybody knows, that they put out. They say, okay, we're going to follow a group of people who leave prison and look at how many of them get rearrested or reconvicted within say, nine years.

Shawn Bushway: And they say, oh, 80% of them do. And that's the number everyone uses, to for this conversation. The problem is, the way people use that number is everybody who ever goes to prison, have an 80% chance of failing, of getting rearrested. However, that's not what that sample is. That's a sample of people that are in prison at any given moment, which is a dramatic over sample of everybody who keeps getting rearrested and reconvicted and go to prison, which is only a small subset of everybody that gets convicted.

Shawn Bushway: Only 30% of people who get convicted ever get convicted again. We have this situation where the numbers that the government provides— perfectly reasonable numbers—but they're not the number that you need to answer the question if you are an employer or a landlord or whatever. Which is to say of the person that's sitting in front of me with a record, what's their probability of getting reconvicted?

Shawn Bushway: And it's nowhere near the number that you would guess if you were thinking about the numbers in the BJS, because the Bureau of Justice statistics numbers are over sampling the people who keep going back. So, you get some basic intuition and then you get some statistics and bills together. But then this myth that everybody re-offends—just not true.

Stuart Yasgur: So, we're all walking around thinking that we've heard from legitimate government sources that rates of rearrests are very high, extraordinarily high.

Stuart Yasgur: And that, and one of the things you're pointing out is there are numbers that are out there, but instead of saying, for everybody who's ever been arrested, this is the likelihood that they're gonna be arrested again. It instead says, for the people who are currently incarcerated, what's their chance of being incarcerated in the future?

Shawn Bushway: Right? So, for everyone who's ever been in prison, what's the chance that they're going to get rearrested or re-put back in prison?

Shawn Bushway: And that's the number we all kind of think we want to know. But that's not what the government gives you. The government gives you the number of people getting rearrested and sent back to prison among those who are released in a given year. Okay? So, that's a very subtle difference.

Shawn Bushway: So, what's the difference?

Shawn Bushway: Okay, so, think about this. I'm a serious repeat offender. I go to prison five times over the course of 10 years. I serve a year, I come out. So, over the course of 10 years, I have gone in and out five times.

Shawn Bushway: You go in once, come out. Ten years, okay?

Shawn Bushway: So, if we pick one year in that 10-year period to study people leaving prison, who's more likely to be picked in the sample?

Shawn Bushway: Me or you? Clearly me.

Shawn Bushway: One of the other facts besides the age crime curve about criminal justice is about 5% of the people who get arrested contribute 50% of the arrests. In other words, it's a small group of people who do most of the offending. And those are the people that are in prison for the most part in any given moment.

Shawn Bushway: And that's not the same as saying of everybody who's ever been in prison, what's their rate, right? There's a lot of people who go to prison one time and never come back. They're not as likely to be in that sample.

Shawn Bushway: And in fact, the people that are going in and out aren't gonna be applying for jobs and aren't gonna be looking for a house and things like that.

Shawn Bushway: And so, it's even more of an incorrect number than it would be just on the basis of the sampling.

Shawn Bushway: And you do need to readjust that number and there is ways to do that. But it just leads to this mistaken impression that, you know, once a criminal always criminal, which is just simply not true.

Shawn Bushway: If you do it on the basis of that kind of number, you think 70% of the people who get convicted are gonna get reconvicted and the actual numbers are only 30%. That's a huge difference.

Shawn Bushway: In other words, 30% of the people who get convicted will ever be convicted again. Yet if you do it the way the government does the statistic, it's 70% and 30% is the number you should actually be thinking about when you're employing people or being a landlord and things.

Shawn Bushway: The other part of that is, that's 30% the day you leave or the day you walk out of court after being convicted. If you've made it 2, 3, 4, 5, 6, 7 years since your last conviction, the probability that you're going to get reconvicted at that point drops like a rock. And by the time you get to 8, 9, 10 years out, there's really no difference, even among people that had very serious criminal records between that person and the people who never had a record.

Shawn Bushway: In other words, you have a very high probability when you first get out, but after—if you survive—if you don't get reconvicted, the chances you're going to get reconvicted are very low. And so, that, again, think about who you're interacting with in the community.

Shawn Bushway: You know, I say there's three basic facts, right? There's a lot more people have convictions than you think—30% of all men have a conviction by the time they're 35. Most of them stop, and if they're out in the community and haven't been reconvicted in a while, their chances of being reconvicted are quite low.

Stuart Yasgur: That really changes how, especially when we're thinking about employment, housing, renting a home to somebody, all those kinds of decisions where we're kind of encountering somebody who may have a record—it really changes how we need to think about it.

Shawn Bushway: I think so,, because in my experience, most people think that criminals, people with records are relatively small part of society, and they're like hardcore. They never stop.

Shawn Bushway: And in fact, that's not true.

Shawn Bushway: And so, now you say to me, but Shawn, I don't know anybody that's been convicted. Yes, you do. You just don't know it because they don't walk around going—I was convicted. And in certain segments of the population that you may work with, say people that are working on your house, contractors, and those kinds of folks, the probability of them having an adult conviction on their record is above 50%.

Shawn Bushway: A lot of people that have been arrested and convicted, even if you don't know that, you know a lot of people that have been arrested and convicted. I think that's part of it is that our lived experience doesn't reveal this information on a regular basis. And then the second part of it is that this statistic sort of feeds the myth, and the myth is...it's just not true.

Stuart Yasgur: And so, what's the consequence of getting the fact that so, many of us have gotten this wrong or that we believe something which isn't true?

Shawn Bushway: I mean, Stuart, you seem like a wonderful guy, but I'm pretty sure you're not the same guy you were when you were 20. Look, he's blushing, so, I think it must be true. So, I'm too, right? I'm not the same guy.

Shawn Bushway: And so, people do change and most men at least can think of a few times where they could have been arrested, but they weren't. I certainly can. And the fundamental reality here is people change. Now, if they didn't, we'd be walking around with bulletproof vests, right?

Shawn Bushway: But people do change, and then we have to think about instead of being worried about everybody that has a record, as if they never changed, the question then becomes, oh wow. There's a lot of people with records. Most of them change.

Shawn Bushway: You know, I still have to be careful because if you're looking for people that are going to commit a crime again, especially after the age of 30, that pool's not the bad place to look. But I also have to be aware that a lot of those people are going to be low risk and make great employees. And so,, I have to be more discerning, I can't just simply say, oh, they have a record, they're bad. No, it doesn't work that way.

Stuart Yasgur: So, it's prompting us to ask a totally different question, especially in hiring decisions.

Shawn Bushway: Absolutely. The question is, okay. And I think this is really interesting because the way it used to be done, they'd just say, Hey, Stuart, do you have a record?

Shawn Bushway: And you'd say, yes, and then that'd be the end of the conversation. Well, that's not the way it works now. Most big companies are only doing the background check after they've already hired you. So, now, you've decided this guy can work for you. They say, hey Stuart, we'd like you to work, but do a background check.

Shawn Bushway: So, you have the qualifications necessary to do the job according to the process by which you were hired.

Shawn Bushway: For someone not just walking out of prison yesterday. Not just being convicted yesterday, but not only that, they have the qualifications to do the job. You've decided that. You met them, you like them, you offered them a job, right?

Shawn Bushway: What's the probability they're going to get convicted? That's a very different question than whether anybody who walks out of prison at any given moment is going to get reconvicted. It's among those people who are in front of you at this moment, after already having done these different things— lasted a certain amount of time, made it through a job interview, gotten their resume together.

Shawn Bushway: And it's actually a fun question to ask. Who doesn't want to see if someone's changed, right? And what sometimes happened is that record becomes like the dominant thing that you think about but remember, people change. Thank God.

Shawn Bushway: Again, it's not hard. Look at yourself and go. So, you just look at yourself. Oh, look at this person. The person did something 10 years ago. Look what they've done since, and ask yourself what's more relevant, the thing they did 10 years ago or the thing they did since, because I almost guarantee you the person that went to prison wouldn't have gotten through your job interview, wouldn't have been able to get to the point where they did this thing. They're not the same person.

Shawn Bushway: I think we all need to have that sort of understanding because you know, the worst thing I see in this space is someone gets a job at a company that doesn't do a background check, performs extremely well for three years, gets promoted, and in the promotion, in order to get to the next job, they get a background check.

Shawn Bushway: They find out that 10 years ago they did some terrible thing and they fire them as if that terrible thing is more predictive of what they're gonna do in the future than the three years of good job performance that led to their promotion in the first place. If anybody takes anything away from that,
that kind of thing should be very upsetting to all of us.

Stuart Yasgur: If employers start thinking about this differently and asking these different sets of questions, they're going to be hiring different people, they're going to recognize the people that they otherwise wouldn't have hired are people that they can and should potentially be hiring.

Stuart Yasgur: How many employers are good at this?

Shawn Bushway: So, this is where it gets hard. There is a real threat for companies of something called negligent hiring. And negligent hiring is, you should have known the person was going to commit a crime or do something harmful. And it is within that tradition acceptable to say, well, if I had a record, you should have known. Now that literature on that case law is known to be infected with this bias that says past behavior is a good predictor of the future behavior. It's actually called hindsight bias. It's not true. However, in that legal framework, it gets used against companies. It's not like I can put in shoplifting, I should have known you were going to commit a murder.

Shawn Bushway: But it's like, you know, you had a simple assault on your record, of course you're a violent person and you were gonna shoot someone. That level of prediction is simply not the case.

Shawn Bushway: It's this classic example, right? Yes. That guy had an assault and yes, he committed another crime. But look at all the people who had assaults who didn't commit another crime, and there's a lot of them, right?

Shawn Bushway: It's a little bit like the marijuana gateway drug hypothesis—everybody that ever used cocaine used marijuana. It's true. Lots of people use marijuana and never use cocaine, right? And so, I think there is a problem in that area because of this. And the thing that brings forward is this idea of type of crime as a predictor of future crime. And that if I know that you were violent, then you're going to be violent in the future. And the problem is that is simply not true.

Shawn Bushway: People are not specialists. People who commit crimes are not walking around going, well, I only steal from people and if they threaten me with a baseball bat, I'm not going to hurt 'em because I only steal. That's not the way this works right? I only deal drugs and if someone threatens me, I'm just going to walk away beause I turned the other cheek. No, I punch him in the head and what you did in the past is not a very good predictor of what you do in the future in terms of, there are other things that are reasonably good predictors of that, but it's not type of crime.

Shawn Bushway: And so, what happens is, because of the negligent hiring legacy here most companies are focusing very, very heavily on type of crime, and as the thing that knocks people out, and it's not a very good predictor of risk. So, the case law in this space says you should, you can manage risk. Convictions, risk is something you are allowed to focus on.

Shawn Bushway: And all of that's well and good, but then the companies focus on type of crime, which doesn't predict risk, especially once you've controlled for the things that do, which is age, number of priors, whether or not you have a felony those kinds of things.

Shawn Bushway: And so, you get this sort of conundrum where I would say the vast majority of employers are not doing a very good job of making this decision once they've hired folks because they're focusing on the wrong things.

Stuart Yasgur: So, it's actually two ways, right? One is the fact that they're focusing on type of crime might be screening out a lot of people that would be a good fit and that potentially they should be hiring. And two, it's not really a very good indication of what the risk levels are. And they do have a responsibility to make sure they're hiring in light of the reducing.

Shawn Bushway: I did a study in New York where we looked at the rules for hiring people to work in nursing homes, and there were certain crimes that are sort of...if you've committed them, you're out.

Shawn Bushway: And, we also looked at all the other factors that predicted risk, and we said, okay, how, if you consider these things...and it goes both ways. They actually say, if you committed a set of minor crimes, you're in. And we said, okay, let's look at these things and see how well they add to the story.

Shawn Bushway: In other words, there's an amount of discretion that they're allowed to use, and they look at a certain set of factors, but then there's these absolutes that go on top of that. And then we said, let's look at what happens when you put the absolutes on. And what we found is two things that were quite striking.

Shawn Bushway: One is, it didn't improve prediction at all. And second, it made the decisions much more biased against minorities. And this doesn't come so, much from the more serious crimes, it comes from the minor crimes. So, the minor crimes tend to be more white, and they are just as predictive as the more moderate crimes if you've been convicted of something.

Shawn Bushway: And yet when you just wipe those out and say, wow, we don't care about those crimes because cause crime predicts crime, which it doesn't, you actually make a less efficient system that's more biased. It's the worst of both worlds.

Stuart Yasgur: So, if companies have to change to get better at this, how hard is to actually change how they're making these decisions?

Shawn Bushway: You know, honestly, first of all, a lot of companies will tell you point blank that, it was made by some lawyer in a room going, well, that sounds like a bad crime. It wasn't based on any evidence. Second of all, I think that the case law in this space says you should rely on the scientific evidence about this.

Shawn Bushway: And it turns out, you know, look...we can't predict perfectly who's going to commit another crime or not. This is not that movie, you know...the minority report. We're not anywhere near that good at predicting the next crime, but we, we are fortunately enough, pretty good at predicting who's low risk.

Shawn Bushway: In other words, it's hard to predict the guy that's going to go and do something really horrible. It's pretty easy to predict the people that are gonna stop. Because most of them have, cause most people stop, so, predicting a more common thing is pretty easy. And that's actually what the employer wants to do, right?

Shawn Bushway: The employer hires the person, finds out that they have a record and they want to find the people they can just hire, and then the rest of them, they're going to have to go through some more detailed process.

Shawn Bushway: So, the question then becomes, well, how do you identify low risk people? Well, we have other situations in our lives where we do this kind of thing, right? I want to loan money to Stuart, right? Stuart's got a nice idea. I think it's a good idea for his business. And then I say, oh, well I better do a credit check on Stuart, right? I'm not looking for whether I...what I wanna know is....I want to identify the people that are going to pay me back.

Shawn Bushway: I'm not looking for bad. I'm looking for good. And actually, oh, Stuart, look at that. He's got, and it's actually easier to predict those folks. So, how do they do that? Well, they do that with a score that takes a number of factors that predict whether or not you pay people back based on whether you pay people back in the past and use that going forward.

Shawn Bushway: It's called a credit score, right? We all know what it is, but why can't we do something similar in this space where we take the known factors that when we're looking at a criminal history record by itself, put it onto a scale and say, hey, look, if they're at 27 out of 28, and the best you can do is 28.

Shawn Bushway: Wow, gee, that's pretty good. And we can also say, well, gee, the people without records, they're at 26. So, if you're at 27, hey, you're doing well. Because it takes all the information that are relevant, puts it on one scale and answers the question that's being posed in the lawsuit that says, you must identify the acceptable level of risk because the judges say, look, there's no such thing as zero risk.

Shawn Bushway: So, what you're trying to do is find the acceptable level of risk, the minimal level of risk that this person will pose. Why not put that level of risk on onto an accurate scale? Find an accurate way to predict that, if that's possible, which it is, and use the factors that do the prediction to then place people on a scale and say, oh, look, if you're above a certain point, yeah, sure, we already hired you. Welcome to the team.

Shawn Bushway: Now, if you're below a certain point, well, we might need to...let's find out more about what's going on...let's hear about what you've done since...let's talk let's sit down and have a conversation. That kind of process is not that hard to think about. And I know there are people out there that work in this space who think that we could change the way people do this in three years.

Shawn Bushway: Matt Joyce, at Envoy believes that, and has written about that. And I think as long as we're doing it based on actual things that predict actual risk, which is what the judges say you should do, you could do that. I think the problem is if you start focusing on type of crime or something which historically been the main factor that people look at, it really becomes a problem.

Stuart Yasgur: That is incredibly fast. If that's possible, or even if twice that amount of time was possible. How many, how big an impact would that have? You know, if one out of three, you say adult males have in this country have had an arrest, that's an enormous number of people whose employment prospects would be impacted by making this decision in a way that more accurately reflects the risk.

Shawn Bushway: Now, Stuart, I know you're just getting into this game, so, I'm going to chide you a little bit. I said conviction, 30%...you said arrest. Arrest and conviction are not the same thing. And in fact, employers are not allowed to use information about arrest only. They can only use information on conviction.

Shawn Bushway: If you actually want to look at the number of people that have an arrest in this country, it's almost 50% by the time you're 50. I mean, it's much higher actually. So, like 30% of people have an arrest by the time they're 22.

Stuart Yasgur: Absolutely. So, fair point...

Shawn Bushway: As a criminologist, I love it when people say or confuse conviction and arrest.... jails and prison. You know, it gives me joy. I'm teasing you, Stuart. He's blushing again, for those of you who can't see this. Okay, now...

Stuart Yasgur: You're accurate. I was going for a broader number. Let's go to conviction. So, if we say one out of three adults.... adult men who've had a conviction in their past would be impacted by this.

Stuart Yasgur: This seems to be an extraordinary number of people whose employment prospect would be improved if we could help employers and people making employment decision get a better sense of what the risks actually are.

Shawn Bushway: Yeah, I think the key here is that a lot of people with records work, right? This is not like everybody with a record doesn't work. But they are... tend to be limited to certain types of jobs, certain career paths partly through to regulation partly due to just the way people make decisions.

Shawn Bushway: And you have to remember that there were something like 50,000 statutes that say you can't hire people with certain types of records. So, none of things I said will change that anytime soon in terms of how you make decisions.

Shawn Bushway: A more realistic assessment of what the risk actually is and getting more data and showing what the level of risk is for actually those people that have made it through the hurdle of getting a job would, I think, allow a lot more freedom for people once they've gotten to the point where they're considered relatively low risk, we could also talk about improving the process by which those people that aren't going to just make it through on first cut and they're going to need more background.

Shawn Bushway: And I know you're talking to Rézme , or you may have already talked to Rézme, they're not working on that problem. But I do think that’s a much more realistic description and depiction of what's going on along the lines. What's interesting is...I'm not telling you we have to change the legal landscape here.

Shawn Bushway: This is literally what the courts under Title VII has said you should do. So, they said, this is what you should do. We're not doing it. We know how to do it. Let's do it.

Shawn Bushway: And yeah, I think there would be a fairly large shift because there's a lot of people with records and a lot of them would make perfectly good employees.

Shawn Bushway: Because remember, people change. They just do. And I think, if you can kind of stay with that fact and trust that fact and ignore the things you say in your head....80% of the people with records never go back. That's not true. It's just not true because it isn't the sample of people that you care about, which is everyone who's ever been convicted or whatever, who are much lower chances. And so, I think it's working through the noise that's in your head, that sort of things, you know, but also, you know, people change, right? Look at yourself. Thank God.

Shawn Bushway: And believe the statistics and the statistics exist. I can show 'em to you. And I think moving to some kind of score, allowing employers to have different standards for different jobs, right? There are some jobs where the chances the person's going to harm anybody is like zero. Think about somebody that answers phones for the airline industry. The AI is watching everything they say. They're working from their house. They get caught the minute they do something wrong, like instantaneously. What's the threat here?

Shawn Bushway: If they're qualified to do the job. So, I mean, I think there's lots of jobs where the vulnerabilities are low and you could accept a higher level of risk. And then there are other jobs where you probably on a lower level of risk and that's fine, but. The question is, can you accurately predict the risk?

Shawn Bushway: And the answer is yes, provided the risk you're trying to predict is the low risk folks. When you try to predict the high risk guys, good luck. It's really hard. But if you're trying to identify the people that changed, it's not that hard because lots of people change. And so,, yeah, that becomes a lot easier and more accurate.

Stuart Yasgur: So, let's say you're somebody listening to this. Maybe you are one employee applying for a job or two, maybe you work in a capacity where you're hiring, trying to bring candidates in through the employment process. What do you do? So, now you know, okay, I have to revisit some of the things that I thought I knew, the world's different than I thought it was, and there's good facts to suggest that that's the case. Now what do I do differently?

Shawn Bushway: So, what the EEOC told people to do is hire me. They said hire a criminologist. I was one of three that did work. And so, I spent a lot of time talking to big companies about how to do this better. And I've talked to companies recently and said, hey, I helped you do this five years ago, how's it going? They're like, oh my God, it's great. It's going faster. The problem is**...**I don't really want to work for you. I'm sorry. I like my job. I like teaching.

Shawn Bushway: So, the question is, is there a way to make this basic logic more readily available to people? I've been approached numerous times about maybe doing something like a credit score for employers.

Shawn Bushway: I'm trying to do something like that call with the Bushway opportunity score. There may be others doing something similar. If you want to look up Bushway opportunity score, you can see what I'm talking about there. So, I think if you're actually an employer and you're trying to make these decisions, and the constant thing they always say is, how do I make this decision? I think there's some help on the way.

Shawn Bushway: For the rest of us. I think we can be a little more reflective about what it means to have a record and, and be cognizant of the fact that a lot more people have a record than you know, and think about your own life and the people in your life and look at how people change.

Shawn Bushway: I was just with a bunch of guys the other day and one of the guys became the Deputy Chief of Police in the city of Albany and someone came to him who knew him when he was a kid, said, oh my God, I never thought, for sure I thought you were going to be in prison and you're a deputy chief.

Shawn Bushway: You know, people change and sort of have that lens in your life, but also be aware that there's a lot of people who have convictions that you don't know about and it's probably okay that you don't know about it because you would probably would treat them unfairly if you did.

Stuart Yasgur: And you said something earlier, you said, if you think back over your course of your life and you think, has there ever been a moment where if I was doing something and had someone else been there, it might've ended up in an arrest or a conviction? For a lot of people, I think if you look back, you say, look, there were moments, but you know, I was lucky that it turned out the way that it turned out. And so, that is, you know...

Shawn Bushway: I mean, the problem is I could probably think of something I did like last a week that I probably should have gotten, you know, I could if something, you know, could have gone the wrong way. But I mean, I think the question is not so, much whether you can think of something like that. I think almost everybody can. But also, what's the prevalence of those things in your life, depending on what, how old you are. I bet you there's a lot more of those things when you are in your early 20s, than there is now if you're 30 or 40 or 50.

Shawn Bushway: Again, people change and I'm not just saying that because I am a pollyanna—I'm not. I'm an academic. I study how these things predict future behavior. I'm telling you there is some prediction element here, but it's within the context of the fact that lots of people change, and most people stopped committing the crimes. And everybody kind of knows that in their heart, right? If we, if people were still offending at the rate they were when they were 20...I don't think we'd leave the house.

Stuart Yasgur: The other piece of this is....part of this message is very optimistic, right? In a world in which there are a lot of things going on, this is one of the areas where a really important issue, we think it's worse than it actually is, that there are many people who could be much more successfully employed than they currently are. And one of the things we have to do is kind of just revisit our thinking about it.

Shawn Bushway: I mean, that's true of crime in general, right? How many of you know that the crime rate has dropped 80% since the late nineties. I mean, it's just....crime rate is nowhere near what it used to be.

Shawn Bushway: But yet if you ask people whether crime is as bad as it used to be, most people say yes. It's not, it's nowhere close. I'm calling you from New York. We had 72,000 people in prison in 2000. Do you know how many people we have prison now? 33,000. How many people actually know that? And the answer is almost no one right?

Shawn Bushway: That we have less than half the people we had in prison before are in prison. We've had dramatic drops. And so, I think something about the criminal justice space leads to lots of misconceptions. I mean, because it's scary, right? We're talking about really scary things that happen to people.
And so,, I think people can have really strong emotional responses.

Shawn Bushway: I'm a never optimist....I keep thinking if I can say it the right way or say it often enough, maybe somebody will listen. And, I find that, the kinds of things I talk about now...when I talked about them 15 years ago, I'd get kicked out of the room and now people listen. So, there's progress and, and I think the framework for this particular context is there to make some pretty serious change quickly. I'm curious to see what's going to happen going forward.

Stuart Yasgur: Shawn, I think that's going to be the last word on it. Thank you so, much for joining us. This was fantastic. Your work is really fascinating. It's publicly available. People should read about it, learn about it. We'll be including links in the description below. Shawn, thanks for taking the time.

Shawn Bushway: Thanks for having me.

Stuart Yasgur: The criminal legal system creates records on approximately one in three adults in the United States. As a result, over 70 million people face structural barriers to employment, housing, and financial stability. The thing about problems of historic proportions is that they're so, big, so, pervasive that we can just start to see them as part of the world we're living in.

Stuart Yasgur: We can lose focus on the fact that these are problems that can be and that need to be solved. All too often, problems of historic proportions are the result of our collective choices, and we can address them by making structural changes that lead to different collective choices, and it's imperative that we do.

Stuart Yasgur: It can be hard for people to wrap their heads around what we mean when we talk about structural innovation.

Stuart Yasgur: So, let's pick an easy example. Have you ever seen a school of fish swimming together? They encounter an obstacle, and it almost looks like they've all coordinated and agreed on how they're going to swim around that obstacle.

Stuart Yasgur: But, you know, if you were able to kind of drop yourself into the perspective of each fish going around that obstacle, they're not thinking about how they're coordinating with every other fish around them. They're just following a set of basic rules to respond to the circumstances that they find themselves in.

Stuart Yasgur: But when you look at it in aggregate, kind of a bird's eye view, you can see the larger patterns starting to emerge and structural innovations, they play a role that's very similar to that obstacle that the school of fish encountered. If you change what that structural innovation is, if you change what the structure of the market is, you can change that aggregate pattern, not because you've spoken to every fish in the school or coordinated all their activity, but because structural changes change the strategic landscape that they're navigating and the results of that, it changes their choices, their behaviors, and ultimately the outcome of their impact.

Stuart Yasgur: All too often, problems of historic proportions result from the choices we make. It's not the choices that any one individual makes, but it's the pattern that goes through all the choices that we're making collectively. And when we create change at the structural level, it changes the aggregate pattern of choices that we're making.

Stuart Yasgur: That level of structural change is something that can be difficult to wrap our heads around. It's absolutely possible and it's something that we need to do when we look at these problems of historic proportions.

Stuart Yasgur: Structural change changes the strategic landscape that changes people's choices, which ultimately affects their behavior and ultimately the impact they have on the world around them.

Stuart Yasgur: I'm Stuart Yasgur, and this is Economic Architecture, the podcast.

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