

Arrest, Guilt, and the Difference Between the Two

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Anna Roberts, *Arrests as Guilt*, __ **Ala L. Rev.** __ (forthcoming 2018), available at [SSRN](#).

We live in a world in which the most detailed information is used to identify and make judgments about us. Facebook wants to know whether you like grass, or a certain kind of wrestling. Google may sell advertisements based on searches for “chest pain.” But in the criminal justice world, we can be sloppy, and dangerously so. As [Anna Roberts](#) explains in her forthcoming article, *Arrests as Guilt*, there is a marked tendency to interpret the eleven million arrests made every year as findings of guilt. That is, we see that someone is arrested, and we conclude that the person is guilty of a crime. That assumption, made too often by journalists, academics, and the public, creates a host of problems.

Most of us can readily recall examples when media outlets appear to equate arrests with guilt. “Perp walks”—deliberately stigmatizing public displays of an arrested person—are common for notorious criminal cases. (Journalists paid considerable attention to the books carried by disgraced movie producer Harvey Weinstein when he recently surrendered at New York Police headquarters, for instance.) But more serious treatments of arrests suffer from the same problem too.

Studies on recidivism, for instance, must rely on some sort of proxy to assess reoffending. The use of arrest (and re-arrest) can be especially problematic. Arrests are not, of course, determinations of factual guilt. Nor are they findings of legal guilt. And arrest numbers alone do not tell the entire picture of criminality. Not only will a substantial portion of arrestees see their charges dismissed, but arrest data also fails to account for those involved in criminal activity who have been missed, ignored, or de-prioritized by the police. Add to this too the independent incentives of line officers who are influenced by factors that may have little to do with crime, such as the availability of overtime pay.

The costs, as Roberts points out, of conflating arrest with guilt are even more concrete for arrestees. Both the private and public sectors pile on punishments well before conviction. An arrest becomes part of a permanent record accessible to many. The mug shot accompanying that arrest might be posted on private websites demanding fees for picture removals. Those demands are compelling because arrests alone can typically lead to refusals of employment, workplace disciplinary measures, and terminations.

Why do we tolerate a system in which arrests alone can lead to loss of your savings through civil forfeiture proceedings, prevent you from receiving public benefits, cause you to lose custody of your children, and expose you to deportation? The fusion of arrest and guilt exists, Roberts argues, because it aligns with widely held assumptions that meet little resistance. No one speaks up for what many people view as a technical presumption of innocence.

In *Arrests as Guilt*, Roberts concludes with a perceptive insight. The use of arrest as a proxy for guilt may explain the puzzle of why urgently needed reforms throughout the criminal justice system have been slow to succeed. If guilt—factual or legal—is demonstrated by arrest alone, there is little incentive to fund public defense, reform prosecutorial overreach, and curb police discretion. If “they’re all guilty,” robust debate to strengthen the rights of the accused wanes. And in her thoughtful and original *Arrests as Guilt*, Anna Roberts explains the enormous social costs of this assumption.

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