

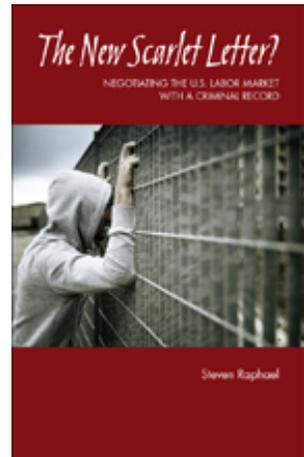
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# Mass Incarceration and Employment

Steven Raphael  
*University of California, Berkeley*



Chapter 1 (pp. 1-12) in:

**The New Scarlet Letter? Negotiating the U.S. labor Market with a  
Criminal Record**

Steven Raphael

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## Chapter 1

# Mass Incarceration and Employment

In 2011, nearly 700,000 people were released from either a state or federal prison. These releases added to the roughly six million adults who have served prison time in the past. Many will experience a host of difficulties upon reentering noninstitutional society. Those with minor children (especially incarcerated men) often accumulate substantial back child-support obligations while incarcerated and face the legal requirement to pay down the balance. Many face precarious housing situations and a high risk of homelessness following release. Most have little in the way of assets and receive a very small amount of “gate money” upon release, usually no more than a few hundred dollars. Many will be returned to custody for either parole violations or a new felony offense. In light of these problems and the sheer number of individuals released from our prisons each year, policymakers at all levels of government are increasingly focused on how to foster and support the successful reentry of former prison inmates.

For a myriad of reasons, stable employment is of central importance to the successful reentry of former inmates into noninstitutionalized society. To start, the material well-being of most released inmates depends principally on what they can earn in the labor market. The U.S. social safety net provides little by way of public assistance for the nonworking poor, especially for able-bodied and nonelderly men. Thus, avoiding material poverty requires gainful employment.

Second, economic research has demonstrated that the likelihood of committing crime depends to some extent on having something to lose. Those with good jobs and good employment prospects in the legitimate labor market tend to commit less crime; those with poor employment prospects tend to commit more. Higher criminal participation among those with low earnings may be driven by the need to

generate income to meet basic needs, a sense that the potential losses associated with being caught and punished are low when legitimate job opportunities are rare, or a general sense of not playing a meaningful role outside of prison. Regardless of the causal avenue, the transition to stable employment is often characterized as a key determinant of desistance from criminal activity and the process of disentangling oneself from the criminal justice system.

Third, most released inmates are of an age where most men are firmly attached to the labor force and where conventional norms regarding responsible adult behavior prescribe steady legitimate work and supporting one's dependents. Facilitating "buy in" among former inmates into conventional society requires that they be afforded the opportunity to transition into the standard roles of other law-abiding citizens.

Finally, formal employment provides daily structure and a sense of purpose for many—factors that may prevent further criminal activity. Criminologists have studied in-depth the "incapacitation effect" of prison—that is, the extent to which prisons reduce crime by forcibly segregating the criminally active. Of course, many other activities incapacitate criminal activity, if we interpret the word *incapacitation* broadly. Schools tend to reduce the criminal activity of youth by keeping them busy during the day. Marriage tends to incapacitate the criminal activity of young men as the accompanying newfound responsibilities and activities supplant more crime-prone settings and pursuits. Extending the metaphor to the labor market, having something to do during the day that generates legitimate income leaves less time for committing crime. Moreover, daily exposure to coworkers who are more firmly attached to legitimate work and less involved in crime may provide an alternative set of positive role models demonstrating how to live one's life within the bounds of the law.

Unfortunately, the employment prospects of many former inmates upon leaving prison are bleak. Moreover, most face many challenges specific to former prisoners that are likely to hamper their labor market prospects for years to come. Of paramount importance

are the characteristics of former inmates themselves. Those who serve time in prison are far from a representative cross section of the U.S. adult population. Inmates, and former inmates, are disproportionately male, have very low levels of formal educational attainment, are disproportionately minority, have unstable employment histories, and often have a history of substance abuse problems. In addition, the prevalence of severe mental illness is quite high. Independent of having a criminal record, most of these characteristics are predictive of poor employment outcomes in the U.S. labor market in their own right.

These factors are compounded by the general wariness of employers and the stigma associated with a criminal history and having served time in a prison. A consistent finding in surveys of employers is a strong reluctance to hire an applicant with a criminal history, and an increasing tendency of employers to either directly ask an applicant about one's history or to use third-party firms to conduct more formal and thorough background checks.

In this book I explore the labor market prospects of the growing population of former prison inmates in the United States. In particular, I document the specific challenges created by the characteristics of this population and the common hiring and screening practices of U.S. employers. In addition, I discuss various policy efforts to improve the employment prospects and limit the future criminal activity of former prison inmates either through improving the skills and qualifications of these job seekers or through the provision of incentives to employers to hire such individuals.

## **THE SCALE AND SCOPE OF INCARCERATION IN THE UNITED STATES**

Although the United States technically has 51 separate criminal justice systems (one for each state and the federal government),

we can divide those incarcerated on any given day into three broad groups: 1) those serving time in a local jail, 2) those serving time in a state prison, and 3) those serving time in a federal prison. County jail inmates are usually those awaiting trial or arraignment, those convicted of misdemeanor and sometimes felony offenses where the sentence to be served is less than one year, and prisoners awaiting transfer to state prison. State prisons hold inmates who have been tried and convicted in state court for violating state law and who are sentenced to at least one year. In recent years, this population increasingly includes drug offenders and inmates who have violated the conditions of their parole, though felony property and violent offenders still make up the substantial majority (roughly two-thirds) of the state inmate population. Federal prisons hold inmates who have violated federal law. In recent years, this population has become overwhelmingly composed of inmates convicted of a select few crimes, with drug felonies (55 percent) and weapons violations (11 percent) making up the lion's share.

There are also two broad groups of individuals residing in the community who are technically still under the supervision of the criminal justice system. Those on probation are usually those convicted of misdemeanors or felonies that are granted a sentence of probation in lieu of a prison or jail term. Probation officers are county employees and coordinate directly with local criminal justice officials from various agencies. Those who violate the terms of their probation may be punished by a spell in prison or jail. Inmates conditionally released from prison are usually supervised in the community by state parole authorities.<sup>1</sup> These releases are often required to meet periodically with their parole officers, must refrain from various activities such as abusing drugs or engaging in further crime, and often are unable to leave their county of residence while on parole. Violating the terms of one's parole can result in a jail spell, a return to prison, or some other form of graduated sanction that does not involve a further incarceration.

As of 2011, there were approximately 2.3 million persons incarcerated in either a state or federal prison or a county jail. Of this total, 1.4 million were in a state prison; 216,000 were in a federal prison; and 736,000 were in a county jail (Carson and Golinelli 2013; Minton 2013). The overwhelming majority of these inmates are eventually released back into society. Among state prisoners, roughly 81 percent in any year expect to leave prison within the next four calendar years, with nearly half expecting to be released within the year. Among federal prisoners, two-thirds expect to be released within four calendar years, and roughly one-quarter expect to be released within the year.

I will postpone a more detailed portrait of inmates until Chapter 3. To start the conversation, however, Table 1.1 presents estimates combining data from the Bureau of Justice Statistics (BJS) and the U.S. Census Bureau of the proportion of adults aged 18–65 in 2007 who were incarcerated on any given day. The table displays figures for adults in this age range by gender and by broad racial/ethnic groups

**Table 1.1 Percentage of Adults Aged 18–65 Incarcerated in 2007, by Gender and Race/Ethnicity**

	Incarcerated in any institution	Incarcerated in a county jail	Incarcerated in a state prison	Incarcerated in a federal prison
All men	2.2	0.7	1.3	0.2
Non-Hispanic white	1.1	0.4	0.8	0.1
Non-Hispanic black	7.9	2.5	4.7	0.8
Hispanic	2.7	0.9	1.5	0.3
Non-Hispanic other	1.1	0.3	0.6	0.1
All women	0.2	0.1	0.1	0.0
Non-Hispanic white	0.1	0.1	0.1	0.0
Non-Hispanic black	0.6	0.3	0.3	0.0
Hispanic	0.2	0.1	0.1	0.0
Non-Hispanic other	0.1	0.0	0.0	0.0

NOTE: Totals are not exact because of rounding.

SOURCE: Raphael and Stoll (2013).

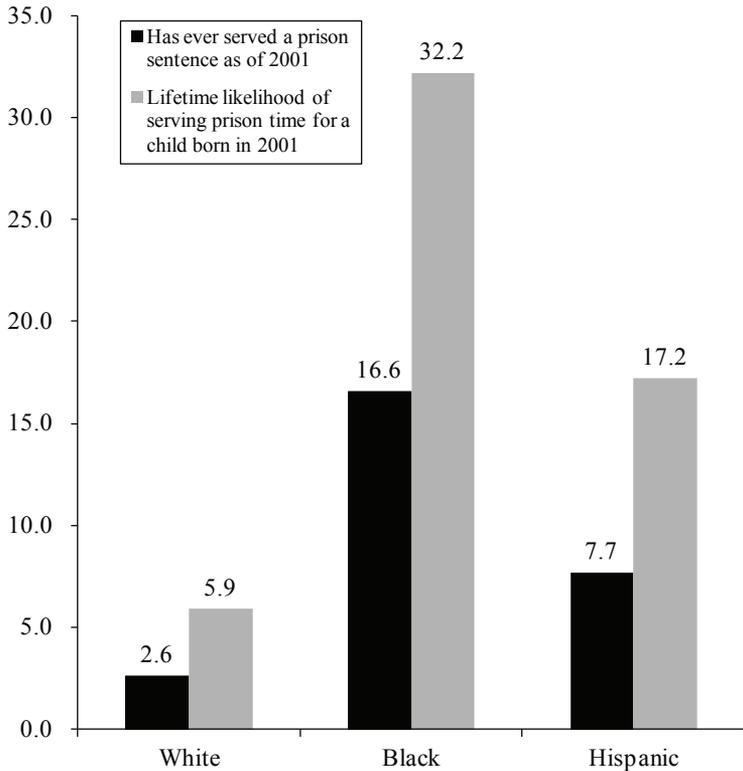
to highlight some of the key disparities. Slightly more than 2 percent of men are incarcerated on any given day, with roughly 80 percent of these men in a state or federal prison. The percentage of women incarcerated is much smaller by comparison (0.2 percent). Table 1.1 also reveals enormous racial and ethnic disparities in the percent incarcerated, with the percentage of black males in prison or jail on any given day more than seven times the figure for white males, and the percentage for Hispanic males roughly two and a half times that of white males. The ordering of the racial differential among women is similar, though the disparities are muted relative to what we see among men.

Perhaps a more relevant way to characterize the scope of incarceration for the purposes of understanding the consequences for the U.S. labor market is to discuss the proportion of individuals who at some point in their lives have served time or will serve time in prison. Such a characterization would help us understand the extent and dimensions of the subpopulation of U.S. adults that have been physically removed from the workforce and that now have a prison spell on record for the remainder of their work careers. Fortunately, the BJS has produced such figures for broad categories of U.S. adults, while independent researchers have produced estimates for specific subgroups of interest.

Figure 1.1 presents BJS estimates of the proportion of adult men in the United States who have served time in a state or federal prison in 2001, as well as the projected chance that a male child born in 2001 will serve prison time at some point in their lives. Naturally, both estimates are much larger than the percentage of men incarcerated on any given day. For example, 2.6 percent of white men have served prison time at some point in their lives, while the figures in Table 1.1 indicate that on any given day only 0.9 percent of white men are in prison. Over 16 percent of African American men have served time in prison, while 5.5 percent are incarcerated on any given day.

The BJS estimates of the lifetime chances of serving prison time are truly staggering. They indicate that fully one-third of African American male children born in 2001 can expect to serve time in

**Figure 1.1 Percentage of U.S. Adult Men Ever Incarcerated in a State or Federal Prison and the Lifetime Likelihood of Going to Prison for a Male Child Born in 2001**

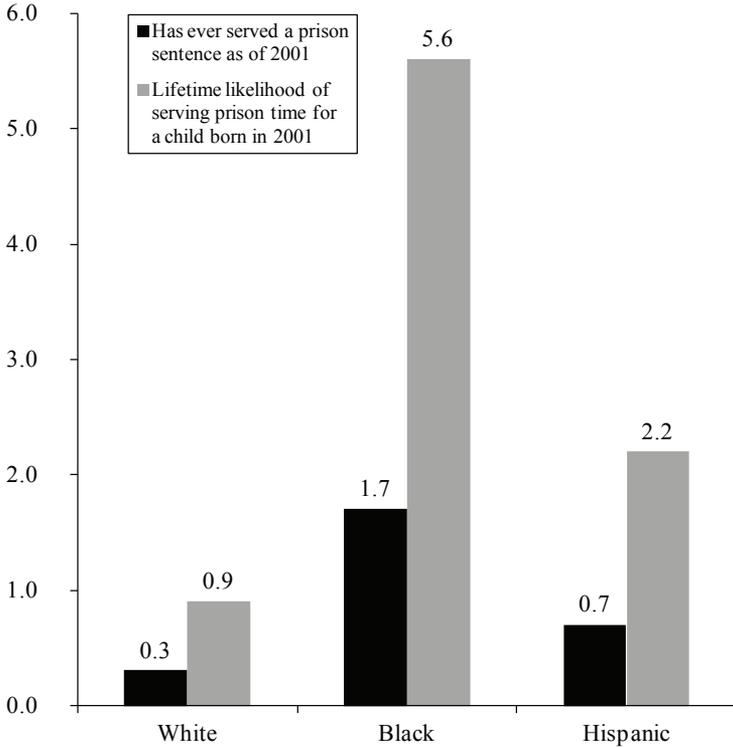


SOURCE: Bonczar (2003).

prison at some point in their lives. The comparable figures for Hispanics and whites are 17.2 and 5.9 percent, respectively.

Figure 1.2 presents comparable results for women. Again, we see much lower rates for women relative to men, yet higher percentages ever serving time than are incarcerated in prisons on any given day. Black women are by far the most likely to have done time and face

**Figure 1.2 Percentage of U.S. Adult Women Ever Incarcerated in a State or Federal Prison and the Lifetime Likelihood of Going to Prison for a Female Child Born in 2001**



SOURCE: Bonczar (2003).

the highest chances of a prison spell at some point in their lives. The absolute disparities between women of different race and ethnicity, however, are much smaller than what we observe among men.

To be sure, these estimates mask enormous differences that exist when we split the population along various additional dimensions. For example, in Chapter 2 we will document the explosive growth in the nation's overall incarceration rate that began during the mid-

1970s. The growing incarceration rate coupled with the documented fact that people are most criminally active during their teens and early twenties means that younger generations in the United States coming of age during the prison boom face much higher risks of serving prison time than older generations. Sociologists Becky Pettit and Bruce Western estimate that roughly one-fifth of black men born between 1965 and 1969 served prison time by 1999, a figure roughly four percentage points higher than the figure for black men overall (Pettit and Western 2004). As this birth cohort was roughly 30–34 years of age in 1999 and younger on average than the average adult black male in this year, this fact implies that the prevalence of a past prison spell is higher among younger African American males compared to older African American males.

Moreover, there are enormous disparities in educational attainment among the proportion that have ever been to prison. High school dropouts are the most likely to have done time, with male high school dropouts, particularly black male high school dropouts, having a particularly high incidence of prior prison incarcerations. For the birth cohort that Pettit and Western (2004) study, the authors find that nearly 60 percent of black male high school dropouts served prison time by their early thirties. In some of my own research on California, I found that nearly 90 percent of the state's black male high school dropouts had served prison time by the end of the 1990s (Raphael 2006).

On any given day, a small minority of the adult population is incarcerated in the nation's prisons and jails. However, the population that has ever served time or that will serve time is considerably larger. The large racial disparities and the disparities in incarceration rates by educational attainment that we have briefly touched upon suggests that the particular handicap of a prior prison record disproportionately impacts those who are already at a disadvantage in the U.S. labor market. Hence, the incidence of criminal justice involvement in the United States may be aggravating already existing inequities.

## OUTLINE OF THE BOOK

The connections between the rise of mass incarceration and the U.S. labor market are numerous and complex. Greater proportions of the workforce passing through prisons at some point in time may lower formal work experience and worsen the soft and hard skills of those who are incarcerated. Prior incarceration creates a new widespread source of stigma that increasingly affects groups that traditionally underperform in the labor market. Employers who rely heavily on low-skilled workers face new issues and potential liabilities regarding how to take into account criminal history records in hiring decisions. Moreover, policymakers at the local, state, and federal levels are becoming increasingly involved in regulating the labor market for former offenders.

This book will analytically approach the labor market for former prison inmates by sequentially studying the factors that influence the market's supply and demand sides. In Chapter 2, I provide an overview of the forces that have led to the unusually high U.S. incarceration rate and, in turn, an increase in the supply of former prison inmates. Since most prison inmates are eventually released after a relatively short spell in prison, the growth in the U.S. incarceration rate over the past three decades has generated a large supply of former prison inmates. In theory, rising crime rates, tougher sentencing, or some combination of the two may all contribute to increased incarceration rates. In Chapter 2, I show that nearly all of the growth in the U.S. incarceration rate is driven by policy changes at the state and federal levels that have increased the likelihood that a convicted offender is sent to prison, as well as increased the amount of time that someone sent to prison can expect to serve. The main policy changes responsible for this trend are a shift toward determinate sentencing, a series of sentencing reforms ushered into practice via the War on Drugs, and legislation increasing the number and severity of mandatory minimum sentences at both the state and federal levels.

Chapter 3 presents an empirical portrait of the prison population, of recently released prisoners, and of youth who eventually are sent to prison as young adults. The portrait is sobering. Those who serve time are overwhelmingly male, disproportionately minority, and have very low levels of formal education. The prevalence of both substance abuse problems and severe mental illness is quite high. Youth who eventually do time exhibit early delinquency and do poorly in school. Many of these characteristics are already predictive of low earnings and weak labor force attachment. However, it should be noted that in decades past, many of these men would not have served prison time and exhibited high rates of labor force participation. In general, the chapter paints a portrait of a mostly male population who are more likely than not to have grown up poor, and who would likely fare poorly in the labor market for reasons other than their criminal histories.

Employers tend to express a strong reluctance to hire former prison inmates and those with criminal records. Moreover, employers frequently act on this reluctance by asking applicants about their criminal records, conducting formal criminal background checks, or by simply guessing who is likely to have a criminal record based on observed personal characteristics. In Chapter 4, I review what we know about how employers use criminal histories in screening job applicants. I present a discussion of the information infrastructure in the United States that generates the content of criminal background checks and the recent Equal Employment Opportunity Commission guidance on how such information can lawfully be used. I also discuss empirical research on the effects of a criminal record on labor market outcomes. This research reveals a large causal effect of having a prior incarceration spell on the likelihood of being called back for an interview and poor employment outcomes for those who have done time.

A number of efforts have aimed to improve employment outcomes for former inmates, including work release programs, usually involving inmates who are about to be released; traditional work-

force development efforts (basic skills remediation, job search assistance); and programs based on transitional job provision. Many of these efforts have been evaluated using randomized control trials, and many others have fairly high-quality nonexperimental evaluations. In Chapter 5, I review this research and condense the findings to what seems to work.

In Chapter 6, I offer policy recommendations aimed at improving the employment prospects of former inmates and ultimately facilitating reintegration into conventional noninstitutionalized society. A reluctance to hire former inmates stems in part from fear of legal liability should a former inmate harm someone on the employer's watch, as well as concerns about the reliability and honesty of these individuals. These concerns could be addressed by more formal and clear guidance about what is expected of employers in the screening process, and perhaps through public efforts to ensure against employer liability. Moreover, there is great room for workforce intermediaries to screen former prisoners. Recent research on criminal desistance suggests that at least one-third of released inmates completely desist upon walking out of the prison gates. Those who successfully complete workforce training programs (obviously a select group) tend to reoffend at very, very low levels. We should devote more effort to harnessing the signals from such programs and use them to reassure employers about specific applicants.

### Note

1. Recent corrections reform in California provides an important exception. In 2011, California altered its community corrections system for released prison inmates so that those inmates convicted of a nonsexual/nonviolent/nonserious crime (referred to as "triple-nons" by corrections policy wonks) are now supervised by local probation departments. Those convicted of more serious crimes are still monitored by state parole officers.

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Steven Raphael

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W.E. Upjohn Institute for Employment Research  
300 S. Westnedge Avenue  
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