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Employment Restrictions for Individuals with Felon Status and Racial Inequality in the Labor Market

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10. EMPLOYMENT RESTRICTIONS FOR INDIVIDUALS WITH FELON STATUS AND RACIAL INEQUALITY IN THE LABOR MARKET¹

Urban joblessness in the United States has reached historic highs (Levine 2008). For example, recent evidence indicates that in 2007 more than half of all African American men in Milwaukee were jobless (51.1). This is nearly a five percent increase from 2006 (46.8 percent) and a thirty-five percent increase since 1990. While rates of unemployment and joblessness for White and Hispanic/Latino men have also increased, the employment crisis is most severe for African American men. Furthermore, high levels of unemployment and joblessness for Black men is not wholly uncommon. In fact, 25 major U.S. cities had Black male jobless rates that exceeded 33 percent. That is, in 25 cities more than one of three Black men were either unemployed or out of the labor market altogether. Recently, scholars have looked to the possible role of the penal system in contributing to racial inequality in the labor market given its expansion in inner-city communities of color.

1. A draft of this chapter was prepared for presentation at the Annual Society of Criminology meetings in Los Angeles 2006. We thank Kimberly Gardner and Jennifer Cossyleon for their invaluable research assistance.

Researchers in stratification and inequality have increasingly turned their attention toward the potential impact of penal policies on current patterns of labor market inequality (Wakefield and Uggen 2010). It is well documented that U.S. rates of felony convictions have soared in the past 30 years. More people are incarcerated and more non-incarcerated felons are serving sentences now than at any other time in U.S. history. These trends in correctional supervision have led to a large criminal class that recent estimates place at over 15 million individuals. All of these individuals are now susceptible to the deleterious effects of possessing a criminal record in the labor market. Evidence also indicates that African Americans and the poor comprise a disproportionate share of prisoners and ex-felons. Thus, social groups that already have the lowest rates of labor force participation also have the highest risk of receiving a felony conviction.

Most of the extant literature concerning the labor market consequences of criminal punishment highlights the incapacitative effect of reduced human capital relative to peers in the labor market, deteriorating skills due to time spent incarcerated, and stigma and discrimination post-release and in the job search process. To be sure, these factors are crucial in explaining the link between criminal punishment and labor market inequality. That stated, much of this previous work focuses on individuals who have been incarcerated and tends to omit institutional factors as possible pathways through which criminal punishment serves to heighten labor market inequality. In this chapter, we make two related claims. First, we maintain that the population vulnerable to criminal punishment's suppressing effects on employment should be expanded to include the millions of felons on probation and in local jails who never go to prison. Second, we contend that the United States legal system, particularly state laws that restrict individuals with felon status from working in a wide range of occupations, contribute to occupational labor market inequality for African Americans.

This research thus foregrounds occupational licensure restrictions and considers their impact on patterns of racial inequality in the labor market. In many states, a felony conviction is sufficient to activate

barriers to numerous occupations. To date, there have been few efforts to examine these laws and their potential role in maintaining or even worsening unemployment and joblessness. Employing a mixed-methodological approach, this study assesses the degree to which these laws divert individuals with a felony conviction out of specific occupations and quite possibly out of the labor market altogether. Specifically, we analyze state-level occupational data and newly collected interviews with individuals convicted of felonies to explore the impact of employment restrictions. This study's objective is to build on efforts to examine the large-scale collateral consequences of U.S. penal policy during a period of significant expansion in criminal punishment. The following section discusses the expansion of the penal state in the United States over the past thirty years.

Correctional Supervision in the United States

The United States criminal justice system has undergone a dramatic transformation over the past thirty years that has received considerable scholarly attention (Feeley and Simon 1992; Blumstein 1998; Tonry 1995; Mauer 1999; Garland 2001; Greenberg and West 2001; Western 2007). In sum, there has been an increase in the number of felony convictions and more convicted criminal defendants are being sentenced to prison for longer terms. This expansion of the crime control industry in the United States has been a costly and potentially destructive social experiment, driven in large part by a political appetite for harsh criminal punishment (Miller 1997; Beckett and Sasson 2000; Wheelock and Hartmann 2007). With the underlying justification of deterrence theory and incapacitation in serious question (see Clear 2009, specifically chapter 2 for a lengthy discussion on this point), many social scientists have begun examining the consequences of this crime control shift, focusing primarily on the expanded use of

incarceration. However, the broader criminal justice context is equally important in that there was not only an enormous and unprecedented increase in incarceration but in other forms of criminal justice supervision as well. Probationers convicted of a felony but who were never sentenced to prison constitute the largest proportion of the population under correctional supervision (U.S. Department of Justice 2009), and these individuals also have their rights and privileges curtailed.

There are today over 7.3 million adults on probation, parole or in jail or prison (Glaze and Bonczar 2009). Over 2 million of those people are incarcerated in prisons and jails. Although felonies are considered serious crimes and are punishable by imprisonment, not all felons spend time in prison. Many serve short stints in jail or start and finish their sentences on probation in their communities. Probation constitutes the largest proportion of individuals under correctional supervision – (4,270,917). Along with the number of persons on parole (828,169), approximately 1 in 45 Americans are under some form of community corrections (U.S. Department of Justice). In contrast, in 1974, the imprisoned population was approximately 210,000 (U.S. Department of Justice 1999) and in 1980, there were 1.1 million probationers and 220,000 parolees.

Looking at the population of parolees, probationers and jail inmates is important because felony-based employment restrictions could potentially impact the labor market prospects for tens of millions of people who have never served a prison term. Even individuals never sentenced to prison, however, must still negotiate life with a criminal record.

Racial minorities, especially African American men, are disproportionately involved with the criminal justice system and thus represent a disproportionate share of individuals with felon status. African Americans are incarcerated seven times as often as Whites. Nationwide, young African American men have a 28 percent likelihood of incarceration during their lifetime (U. S. Department of Justice 2003); this figure exceeds 50 percent among young African American high school dropouts compared to 11 percent for comparable White men (Western

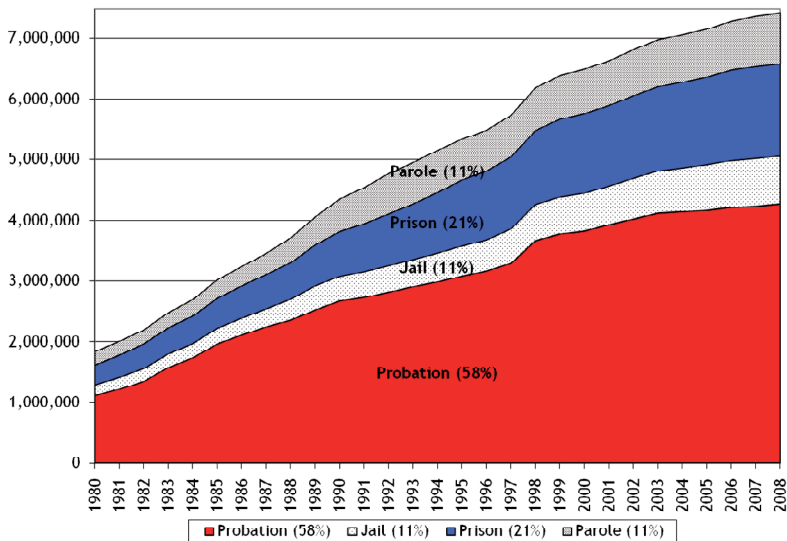


Figure 1: Population under Correctional Supervision 1980 to 2008

2006). As Pettit and Western (2004) point out, more African American men were imprisoned in 2003 than were attending college or serving in the military that year. Based on an analysis of demographic life tables, Uggen, Thompson, and Manza (2006) estimate “a ‘felon class’ of more than 16 million felons and ex-felons, representing 7.5 percent of the adult population, 23.3 percent of the black adult population, and an astounding 33.4 percent of the black adult male population” (p.288). Well-documented racial inequalities are deeply embedded in the criminal justice system, such that African Americans are more likely to have felon status than other groups and thus more likely to be impacted by felon-based employment restrictions.

Employment and Occupational Restrictions

A long list of federal and state-specific restrictions related to work, family, and civic activities are imposed on people who have been convicted of crime, or in some cases, merely arrested or charged. Because they are typically located outside the penal code, implemented by non-criminal justice institutions, and interpreted by the courts as civil regulations rather than criminal penalties, these restrictions are called “collateral consequences” or “collateral sanctions” (see, e.g., Ewald and Uggen 2011). These consequences restrict, and sometimes ban outright, felons and ex-felons from voting, serving as jurors, receiving public assistance, and seeking employment opportunities. The current chapter focuses on employment bans and disqualification for occupational licenses and their impact on recent patterns of racial and ethnic inequality in occupations and income. Examples of outright federal employment bans for ex-felons include, “airport security screeners and other airport jobs with direct access to airplanes or secure airport areas, and armored car crew members” (Dietrich 2002). State employment bans for ex-felons are generally much more extensive, often including any occupations concerning the health and safety of children or vulnerable adults (*ibid.*). This class of restriction also refers to disqualifications ex-felons face when applying for numerous types of occupational licenses. While these are less direct, they have essentially the same outcome—a ban on many occupations—because engaging in certain occupations without a professional license can result in criminal sanctions (May 1995).

Professional licensing restrictions are somewhat complicated because felony conviction is typically a sufficient condition, but not a necessary condition, for revoking or denying a professional license. While there are blanket restrictions that prohibit ex-felons from obtaining a number of different licenses, “character component” or “good moral character” statutes also affect the employment prospects of felons (May 1995). These regulations do not target ex-felons *per se*, but instead disqualify individuals under the assumption that if he or she has been convicted of a felony, then issuing an occupational

Table 1. Occupations Affected by Employment Restrictions in Florida (ACLU)

| Statute | Occupation | Statute | Occupation |
|----------------------------|--|--------------------------------|---|
| F.S. 457.101 | Acupuncture | F.S. 481.201 | Interior Design |
| F.S. 458.301 | Medical Practice | F.S. 481.311 | Landscape Architecture |
| F.S. 458.301 | Medical Faculty | F.S. 482.001 | Pest Control |
| F.S. 459.001 | Osteopaths | F.S. 483.101 | Clinical Laboratories |
| F.S. 460.401 | Chiropractors | F.S. 483.30 | Multiphasic Health Testing Centers |
| F.S. 483.825 | Clinical Lab Personnel | F.S. 483.825 | Clinical Laboratory Personnel |
| F.S. 461.001 | Podiatrist | F.S. 483.825 | Medical Physicists |
| F.S. 462.01 | Naturopathy | F.S. 484.001 | Dispensing of Optical Devices |
| F.S. 463.001 | Optometry | F.S. 484.0401 | Hearing Aid Specialist |
| F.S. 464.001 | Nursing | F.S. 486.001 | Physical Therapy Practice |
| F.S. 465.001 | Pharmacy | F.S. 489.101 | Contracting |
| F.S. 466.001 | Dentistry, Hygiene, and Dental Labs | F.S. 489.501 | Electrical and Alarm System Contracting |
| F.S. 467.001 | Midwifery | F.S. 489.551 | Septic Tank Contracting |
| F.S. 468.1105 | Speech-Language Pathologist, Audiologist | F.S.490.009 | Psychological Services and Clinical |
| F.S. 468.1635 | Nursing Home Administration | F.S. 491.006 | Counseling and Psychotherapy Services |
| F.S. 468.201 | Occupational Therapy | F.S. 492.105 | Professional Geology |
| F.S. 468.3001 | Radiologic Technology | F.S. 493.6105 | Private Investigative, Private Security and Repossessive Services |
| F.S. 468.35 | Respiratory Therapy | F.S. 112.001 | Public Officers and Employees |
| F.S. 468.381 | Auctioneers | F.S. 112.531 | Law Enforcement and Correctional Officers |
| F.S.468.401 | Talent Agencies | F.S. 112.80 | Firefighters |
| F.S. 468.433 | Community Association Management | F.S. 494.0031 F.S. 494.0061 | Mortgage Brokers Mortgage Lenders |
| F.S. 468.451 | Athletes' Agents | F.S. 469.009 | Asbestos Abatement |
| F.S. 468.501 | Dietetics and Nutrition Practice | F.S. 469.409 | Professional Fundraising Consultant |
| F.S. 468.520 | Employee Leasing Agency | F.S. 496.410 | Professional Solicitors |
| F.S. 468.601 | Building Code Administrators | F.S. 497.433 | Funeral and Cemetery Services |
| F.S. 468.70 | Athletic Trainers | F.S. 501.605 | Telephone Sellers |
| F.S.468.80 F.S. 469.001 | Orthotics, Prosthetics, Pedorthics | F.S. 516.05 | Consumer Finance |
| F.S. 469.001 | Asbestos Abatement | F.S. 517.12 | Securities Transactions |
| F.S. 470.001 | Funeral Directing | F.S. 320.27 | Motor Vehicle Dealers |
| F.S. 470.001 | Embalming | F.S. 648.27 | Bail Bond Agents and Runners |
| F.S. 470.001 | Direct Disposition | F.S. 310.071 | (Boat) Pilots |
| F.S. 471.001 | Engineering | F.S. 484.056 | Dispensing of Optical Devices and Hearing Aids |
| F.S. 472.001 | Land Surveying and Mapping | F.S. 476.024 | Barbering |
| F.S. 473.301 | Public Accountancy | F.S. 477.012 | Cosmetology |
| F.S. 474.201 | Veterinary Medical Practice | F.S. 478.41 | Electrolysis |
| F.S. 475.001 | Real Estate Broker, Salespersons, Schools and Appraisers | F.S. 480.031 | Massage Practice |
| | | F.S. 481.201 | Architecture |

license could pose a public safety issue. Many states and municipalities disqualify ex-felons from professional licenses that are unrelated to the offense for which an ex-felon was originally convicted. Occupational restrictions are expansive and cover a multitude of different jobs and positions:

Countless federal, state, and municipal laws single out the ex-felon for possible exclusion from the majority of regulated occupations. In some states virtually the only “profession” open to an ex-felon is that of burglar . . . A definitive study of the prevalence and impact of offender restrictions was performed in the early 1970’s when there was a growing interest in correctional reform. The study disclosed 1,948 separate statutory provisions that affect the licensing of persons with an arrest or conviction record (May 1995: 193).

Despite the potential importance of these laws for understanding criminal punishment and racial inequality in the labor market, the impact of felon employment restrictions has rarely been studied.

The Intersection of Employment, Race, and Criminal Punishment

Despite anecdotal evidence that the United States has made significant headway in addressing problems of racial equality, deep and persistent racial disparities continue to mark the landscape of race relations a decade into the second millennium. Almost every marker of social well-being places racial minorities, especially African Americans, behind Whites. Racial inequalities in the labor market provide a stark illustration of how persistent these trends have been. For example, the unemployment gap between African Americans and Whites has largely stagnated. According to the Bureau of Labor Statistics, rates of unem-

ployment fluctuated considerably for both groups between 1972 and 2008. Despite within-group fluctuations over time, the unemployment rate for African Americans has hovered around twice the unemployment rate for Whites during this period. In 1972, the unemployment rate for White males aged sixteen and over was approximately five percent while the comparable rate for African American males was over ten percent. In 2008, the rates and the differences between the rates were almost identical—the unemployment rate for White males was 5.5 and for African American males 11.4. Furthermore, on average, African American men are unemployed for about five and a half weeks longer than White men. Some argue that the employment situation amongst African Americans in urban areas has actually worsened over the past twenty years.

Joblessness² amongst urban African American men has reached levels never before observed. Wilson argues that in many neighborhoods in south Chicago the majority of adult residents are without work (1996). He also argues that while employment opportunities for the well-educated expanded during the early nineties, work for people at the rear of the labor queue became scarcer. In fact, Wilson (1996) claims that joblessness is the primary factor in the continued deterioration of predominantly Black inner-city neighborhoods. He posits that increasing joblessness is the most significant problem in urban ghetto areas and this change led to numerous other problems such as the expansion of the number of “poor” census tracts. He also states that, “High rates of joblessness trigger other neighborhood problems that undermine social organization, ranging from crime, gang violence and drug trafficking to family breakups and problems in the organization of family life.” (p. 21; 1996). Joblessness is also associated with a host of individual outcomes, such as general well-being and psychological

2. Some posit that unemployment does not capture the true extent of people without work, since it excludes numerous groups of people who are not in the labor force but should be counted among those individuals that are involuntarily unemployed, like individuals that have given up looking for work and individuals that may never have entered the legitimate labor market to begin with. Conversely then, the joblessness measure counts all people of working age that are unemployed (Levine 2008).

health (Cole, Daly, and Anita 2009) as well as social outcomes such as crime (Sampson and Wilson 1995), and violence (Morenoff and Sampson 1997). In sum, Wilson posits that as more individuals in poor urban communities go without work, problems of poverty, crime, and drugs will continue to persist and perhaps even worsen.

More recent work confirms Wilson's argument and shows that joblessness among Black men has reached historic highs (Levine 2008). Levine finds that in 2007, more than half of all African American men in Milwaukee were jobless (51.1). This is nearly a five percent increase from 2006 (46.8 percent) and a thirty-five percent increase since 1990. Furthermore, the jobless rate for Black men in Milwaukee is over three times the jobless rate for White men (18.6 percent) and more than doubles the Hispanic jobless rate (22.9). Such patterns of joblessness amongst urban Black males are not unique to Milwaukee. Levine reports that Milwaukee ranks second on a list of thirty-five metropolitan areas in the United States. In 2007, Buffalo, Milwaukee and Detroit all had Black male jobless rates over fifty percent. Memphis, Philadelphia, Birmingham, Cleveland, Pittsburgh, Kansas City, San Francisco, Cincinnati, Chicago and St. Louis had Black male jobless rates over forty percent. Out of the thirty-five cities examined, only Denver had a Black male jobless rate that was below thirty percent.

Unemployment and joblessness are not the only areas in which large racial disparities continue to persist in the labor market. Even when African American men work, they often receive less pay. Data from the Bureau of Labor statistics show that in 2007 the median weekly income for African American men was \$188 dollars less than White men. In 2008, the earning gap between African American men and White men increased to \$200. Research demonstrates that much of the Black-White earnings gap is attributable to racial inequality within occupations (Kornich 2009), further highlighting the importance of mechanisms such as felon employment restrictions that contribute to the ordering of individuals within occupational labor queues. However, Western and Pettit contend that the penal expansion has actually masked the true scope of the Black-White wage gap and,

by including the incarcerated population in wage estimates, the wage gap increases by as much as 20 percent. In addition, when employed, a greater proportion of African American men (2.8 percent) receive minimum wage than White men (1.8 percent).

Unpacking the sources that contribute to racial gaps in unemployment, joblessness and occupational attainment is challenging because they stem from many sources. The most obvious factor is a difference in human capital. On the whole, racial differences in valuable labor market assets such as training, skills and education explain much of the racial gap in employment. Compounding these problems, however, are deep racial divides in social capital. Whites are more likely to possess social networks that can yield significant labor market rewards, even if it is little more than notifying a friend about a job opening (Hardaway and McLoyd 2009). Furthermore, the impact of criminal punishment can work indirectly by suppressing human capital (individuals are in prison instead of gaining an education or work training and experience), or disrupting the formation of social capital (key social bonds are strained or even severed during time spent imprisoned).³ We take care not to understate the indirect connections between criminal punishment and labor market inequality but it is our contention that there is a unique direct effect of criminal punishment (via employment restrictions) on racial inequality in the labor market.

Related research has examined fundamental shifts in the economic production of goods as a source of sustained levels of inequality in the work force. The deindustrialization of the United States economy has led to a considerable contraction of the labor market. Not all sectors, however, have shed jobs equally and the type of manufacturing jobs that once provided many inner-city residents a livable wage have been replaced by service sector jobs. Not only do these service sector jobs tend to pay less but they are also often part time and offer fewer benefits. Now more than ever, the “good” jobs require more training and more education (even college degrees) – qualifications which are difficult to accrue for individuals who come to employers

3. Clear (2007) summarizes the literature concerning the impact of incarceration on processes of human and social capital formation.

with few marketable skills to being with. Other potential sources of maintained racial inequality in labor include weak labor unions, residential segregation, and disinvestments in communities of color (Wilson 1996). Recently, scholars have looked to the role of the penal system in contributing to racial inequality in the labor market, given its prevalence in inner-city communities of color. To the extent that the labor market penalty for a felony conviction extends beyond serving a prison stint, efforts to estimate the impact of criminal punishment on labor market outcomes have considerably underestimated its impact on labor market inequalities.

It is not always clear whether the deleterious effects of criminal punishment on labor market outcomes is a function of punishment or self-selection. Individuals who spend time in prison are not representative of the population as a whole and many would likely experience some level of economic hardship even if they *had not* been incarcerated; about one-half of all prison inmates reported being in poverty before their imprisonment (Wheelock and Uggen 2007). Related research calls into question assumptions about a negative effect of incarceration length on earnings and finds negligible effects on the length of time spent in prison (Kling 2006). This makes assessing the unique contribution of incarceration in current trends of inequality challenging. Western addresses the selection problem by employing fixed effect models and quasi-experimental techniques in which he finds cases that match on all characteristics except for a history of incarceration (2006). His findings reaffirm suspicions that, even after statistically controlling for selection into prison, incarceration reduces lifetime earnings, hourly wages, and employment. It also depresses the likelihood of marriage; enhances the chances of divorce when married; and elevates the number of children with an absent parent, most often a father. As would be expected, the deleterious effects of incarceration are most pronounced for racial minorities, especially African Americans.

If indeed informal consequences of incarceration and felon status lead to dramatic declines in wages, employment and other labor-related outcomes, it would seem plausible that we would observe similar pat-

terns with respect to formal employment and occupational restrictions. The rationale is that African American men are more likely to be incarcerated and have a felony conviction when re-entering the labor force which, in turn, reduces their earnings and prohibits them from obtaining employment. African American men also have the greatest risk of formal disqualification for certain types of employment and occupational licenses due to their past criminal background.

Method and Data

We employ a mixed-methodological approach to observe the aggregate effects of state laws on racial disparities in the labor market as well as individual-level understanding of the barriers people face when attempting to reenter the labor market after release from prison. Our intent for this chapter is to present results from preliminary analysis to illustrate plausible causal pathways between felon employment restriction laws and racial inequality in labor market outcomes. Our findings do not provide conclusive evidence that felon employment restrictions enhance racial inequality in the labor market, if such evidence exists. However, considering the lack of attention employment restrictions have received, we hope that these preliminary analyses help shed light on a rarely studied mechanism linking punishment to broader patterns of inequality.

The first stage of this chapter is to match state-level data on employment restriction laws with state data on unemployment, wages and occupations. We analyzed the matched data using a simple difference-in-difference (DD) technique to account for state differences in racial disparities that are unrelated to employment restrictions. Directly comparing rates of employment between the two states is problematic because there are likely several unobserved factors fueling these differences that are completely unrelated to felon employment

restriction laws. The challenge is to isolate the impact of felon employment restrictions and to compare racial disparities within occupations within each state. DD is a common tool to analyze policy effects since it circumvents many endogeneity problems when comparing heterogeneous units (Bertrand, Duflo, and Mullainathan 2004). A DD approach certainly does not yield conclusive evidence that felon exclusion bolsters racial inequality in labor market outcomes. Rather it simply brings one piece of evidence to bear on whether racial inequalities worsen in jobs that are restricted. To be sure, additional evidence is required to more conclusively calculate felon employment restriction's impact on labor market outcomes.

The logic of this approach is to compare White and African American rates of employment across select groupings of occupations for two states. We initially chose Minnesota and New Jersey because we have the most complete information on their employment restrictions and they pose an interesting juxtaposition in that one can be classified as a state with low levels of employment restrictions (Minnesota) and the other has comparatively high levels of restrictions (New Jersey). We then group occupations into positions that New Jersey restricts but not Minnesota, positions that neither state restricts and positions that both states restrict. This step grants leverage on which state has a greater racial gap across restricted and non-restricted groupings of occupations.

Specifically, we take the difference of rates of employment across occupational subgroups. In the following equation, $White_{nj}$ and $Black_{nj}$ represent the rate of White and Black employment per 100,000, respectively, across different employment sectors in New Jersey. The $White_{mn}$ and $Black_{mn}$ coefficients indicate the corresponding rates of White and Black employment rates in Minnesota.

$$(White_{nj} - Black_{nj}) - (White_{mn} - Black_{mn})$$

This equation compares the *degree* of racial disparity between New Jersey and Minnesota with the expectation of finding positive DD

values, indicating higher levels of racial disparities in occupations that are restricted in New Jersey but not Minnesota. If there is no impact of felon employment restrictions on persistent patterns of racial inequality, then the White-Black gap should not be discernibly larger for occupations that are restricted in New Jersey but unrestricted in Minnesota. We also examine DD tests for occupations that both states restrict and occupations that both states permit individuals with felon status to hold. Finally, since the male incarceration rate is significantly higher than the female incarceration rate, we also conduct DD tests for gender, with the expectation that racial disparities should be larger for males than for females.

The second stage of this project analyzes recently collected interview data from released prisoners and individuals with felon status. As a pilot study, we conducted thirty interviews with participants residing in the Milwaukee area during the spring of 2010. This pilot study was completed with the assistance of a local non-profit organization working with felons and ex-felons on issues of reentry such as employment, housing, counseling, and family reunification. To provide a more nuanced understanding of felons and ex-felons' understandings of their reentry experiences, interview questions addressed a variety of issues including: criminal activity, laws, employment, housing, relationships with family and friends, issues of physical and mental health, experiences with violence, as well as future aspirations and goals. For this chapter, we present and discuss several common themes raised by participants related to employment, including their perceived employment prospects, barriers to stable jobs, and the perceived role of legal restrictions in the job search process. This stage of analysis sheds light on whether individuals perceive felon employment restriction laws as being barriers to employment and whether these laws have curtailed their occupational prospects and aspirations. It also identifies other barriers that individuals with felony status perceive as impeding their efforts at gaining stable employment.

Released prisoners face numerous obstacles and barriers to gainful employment, and they often funnel into specific types of low-wage

and low-skill positions (Visher and Kachnowski 2007; Sabol 2007). Much of their entrance into different labor market sectors would then be contingent on their views of the sectors that are most viable given their criminal record. Thus, these interview data complement the aggregate state analysis by identifying the labor market sectors that individuals with felon status are most likely to perceive as viable employment opportunities. The interview data also provide information on whether released prisoners even seek positions within occupations that are prohibited—if not, then the impact of employment restrictions could be marginal. The in-depth interviews also explore how felons and ex-felons find leads on employment opportunities, understand their labor market chances more generally, while matching their perceptions of their labor market chances with the types of positions they actually hold.

As with the state-level analysis, we present preliminary analysis of the interview data with the intent of discussing initial themes that have surfaced. Only recently has research begun to link changes in penal policy to persistent labor market inequalities in unemployment, income and occupation. To be sure, these efforts have yielded important insight about the penalties individuals incur after completing their prison sentence. However, much of this work continues to provide incomplete accounts of the reentry process for many released prisoners. This interview data grants sheds light on how individuals with felon status understand the job search process and whether legal employment restrictions represent salient challenges that must be negotiated, background noise in a process already rife with pitfalls and low chances of success, or somewhere in-between.

State-level Analysis

The results of the state-level analysis indicate that large numbers of African Americans are excluded from the labor market in numerous jurisdictions. In the nation as a whole, a 2006 study estimated that approximately 3.9 million former felons in the U.S. population had completed their sentences but remained subject to collateral sanctions, representing 15 percent of the African American voting age population and 23 percent of the African American adult men (Uggen, Manza, and Thompson 2006). Because occupational licensure restrictions are state specific, we turn our attention now to the occupational data from New Jersey and Minnesota.

We analyze racial gaps in a total of 801 U.S. Census occupational categories. According to the best available information for 2000, individuals with felon status were disqualified from 93 different occupations in both states, ranging from aircraft controllers to dental assistants. Felons remained eligible for 680 different occupations in both states but were disqualified from 28 occupations in New Jersey but not Minnesota. Overall, and to the extent that these restrictions were enforced, individuals with felon status would have been disqualified from approximately one out of every 6.5 occupations in New Jersey and one out of every 8.5 positions in Minnesota.

Taken as a whole, preliminary results for this stage of analysis support the key hypothesis that racial disparities are higher in New Jersey than Minnesota. Table 2 shows that for both genders, the DD coefficient is +76, indicating that the racial gap is larger in New Jersey for all occupations restricted in New Jersey but not Minnesota (which comprise 3.5 percent of all occupations).

We reiterate that this finding does not provide conclusive evidence of its impact since there could be factors that would lead the specific occupations that are excluded in New Jersey to have greater racial inequality than the same occupations which are unrestricted in Minnesota. However, to the extent that such factors are not directly associated with whether or not a state disqualifies felons and ex-felons

Table 2. Difference-in-Differences for all Occupations

| | w_{nj} | b_{nj} | w_{mn} | b_{mn} | $w-b_{nj}$ | $w-b_{mn}$ | gap_{nj-mn} | gap_{m-f} |
|------------------------------------|----------|----------|----------|----------|------------|------------|---------------|-------------|
| Restricted in NJ but not MN | | | | | | | | |
| Total | 348 | 360 | 350 | 438 | -13 | -88 | 76 | |
| Male | 293 | 333 | 256 | 388 | -40 | -132 | 93 | 34 |
| Female | 402 | 388 | 443 | 488 | 14 | -45 | 59 | |
| Unrestricted in both | | | | | | | | |
| Total | 186 | 194 | 194 | 167 | -9 | 27 | -35 | |
| Male | 210 | 222 | 220 | 191 | -13 | 29 | -42 | -14 |
| Female | 162 | 166 | 168 | 144 | -4 | 24 | -29 | |

from holding an occupation, the finding is consistent with our most basic supposition concerning the role of employment restrictions on racial inequality in labor market outcomes. The results from Table 2 also reveal the expected gender differences. The DD coefficient is positive for both men (+93) and women (+59) in occupations that New Jersey restricts but Minnesota does not and is larger for men. These results suggest that racial gaps are larger in New Jersey among men and for occupations that are restricted in New Jersey but not Minnesota.

Interestingly, the results of DD tests for occupations unrestricted in both states indicate negative DD coefficients for compared occupational groupings. In these occupations (which comprise 85 percent of all occupations examined), the DD coefficient is negative for both genders (-35) and men (-42) and women (-29) separately. These findings suggest that in contrast to occupations that are restricted in New Jersey but unrestricted in Minnesota, there are greater levels of occupational inequality in Minnesota for occupations that are unrestricted in both states. This provides indirect support for our hypotheses concerning the impact of felon employment restrictions,

in that Minnesota tends to have greater levels of racial inequality in occupations that are unrestricted in both states. It is only when we focus on occupations that are restricted in New Jersey but unrestricted in Minnesota that we observe greater levels of racial inequality in occupations in New Jersey.

Looking at specific occupational groupings, Table 3 shows the results of DD tests for three occupations that usually command modest salaries and require low levels of education and training. Two are restricted in New Jersey but unrestricted in Minnesota—bartenders and tellers—and one is unrestricted in both states—customer service reps.

Table 3. Difference-in-Difference for Specific Occupations

| Restricted in NJ but not MN | | <u>white</u> <u>rate</u> _{nj} | <u>black</u> <u>rate</u> _{nj} | <u>W-B</u> _{nj} | <u>W-B</u> _{mn} | <u>gap</u> <u>nj-mn</u> |
|---|--------|---|---|--------------------------|--------------------------|----------------------------|
| Tellers (516) SOC 43-3071 | Female | 552 | 710 | -158 | 106 | -264 |
| Tellers (516) SOC 43-3071 | Male | 66 | 92 | -25 | -93 | 67 |
| Bartenders (404) SOC 35-3011 | Female | 306 | 306 | 246 | 283 | -37 |
| Bartenders (404) SOC 35-3011 | Male | 263 | 263 | 180 | 167 | 13 |
| Unrestricted in both states | | | | | | |
| Customer Service Rep. (524) SOC 43-4051 | Female | 2201 | 1312 | 889 | -1724 | 2613 |
| Customer Service Rep. (524) SOC 43-4051 | Male | 801 | 714 | 88 | -305 | 393 |

The findings show mixed support for the notion that employment restrictions for felons and ex-felons exacerbates and maintains racial inequality in occupations. Positive DD coefficients indicate greater levels of racial inequality for men amongst tellers (67) and bartenders (3) in New Jersey, yet greater levels of racial inequality for these positions (tellers – 264 and bartenders – 37) for women in Minnesota. It is plausible that gender differences in incarceration rates are so

pronounced that felon employment restrictions worsen racial gaps for tellers and bartenders in New Jersey for men but not women. Further complicating the results for specific occupations, DD coefficients are also positive for customer service representatives, suggesting greater racial gaps in New Jersey for men (393) and women (2,613), even though this occupation is unrestricted in both states. To be sure, additional analysis is required to unpack these mixed findings, starting with DD test for specific types of occupations, especially ones that individuals with felon status are most likely to seek, and DD tests for additional states.

On balance, the results are generally supportive of our contention that felon employment laws have a substantial impact on maintaining current patterns of racial inequality in labor market outcomes. When limiting the analysis to just select occupations, however, the support becomes obfuscated. While we did observe higher levels of racial inequality in New Jersey for tellers and bartenders, New Jersey also had higher levels of inequality for customer service workers, an occupation that is unrestricted in both states. We now turn our attention to whether individuals with felon status perceive these laws as truncating their job search and if so, we examine how they negotiate the job search process keeping these laws in mind.

Milwaukee In-depth Interviews

In this section of the chapter, we present preliminary results from 30 in-depth interviews with individuals at varying points in the reentry process ranging from those released from prison to individuals who have been out of prison for over a decade. One of our respondents was convicted of a felony drug offense but never spent time in prison. The interviews addressed numerous aspects of their lives, but for the purposes of this chapter, we focus on the items concerning employ-

ment. The sample of respondents is in no way representative of all individuals with felon status. We constructed the sample by working in collaboration with a local non-profit agency that seeks to help felons find work and stabilize their lives. Since participation with the program is not mandatory, our sample likely consists of individuals specifically seeking support during their reentry. The sample tended to be older, the average age being nearly 42 (41.7) and mostly African American (22 out of 30), 6 out of the 30 are White and another 2 are Hispanic/Latino. Most of the White respondents were convicted of sex offenses, and thus faced the additional stigma of being a registered sex offender. Offenses for all other participants varied from non-violent drug offenses to manslaughter.

Many of the respondents were currently under correctional supervision in the Milwaukee area and were having extreme difficulty in finding work. The majority of our respondents were unemployed. Of those that worked, several were employed by the non-profit organization that was assisting individuals with felon status find employment. One of the few consistent themes that emerged is that finding stable work proved to be a tremendous challenge. One of the most common challenges they faced when looking for a job was labor market discrimination against individuals with felon status. Many of the respondents reported that many companies and businesses they applied to would not even consider their application because of their criminal background. Dre, a 32 year old African American male who was convicted of multiple offenses including battery, now works for the non-profit organization as a case worker. When asked if he thought it was getting harder to place clients in a stable job, he stated;

I mean, now companies are so stringent and rigid on, you know, your background and, you know what I mean, we call companies now and they just flat out say we don't hire felons, you know, which is crazy. So it's scary to think that that attitude is out there, just because someone's a felony ... a felon means you can't hire them. I mean, do

you know what the labor laws are? If the felony doesn't conflict with the position, you have to consider them.

Jack is a 39 year old unemployed African American male who served in the military during the Iraq War and was convicted of armed robbery. He affirmed Dre's sentiments when asked about the barriers he has faced when looking for work, "Umm, stereotypes. Trying to find a job. You know, they don't look at who you are; they look at who you are. They see you on paper and they say that this is who you are instead of getting a chance to know you and figuring out who you are. You know? Umm, that's been hard. Trying to find a job." Finally, Paul a 55 White male who had been convicted of drug conspiracy and has a MBA from a prestigious university was asked if he was having difficulty finding work since his conviction. He responded;

Terrible, ever since I've been arrested, I haven't been able to get one because in probably 95% of the jobs that I apply for, somewhere in the first ten questions, they ask: "Have you ever been arrested of a felony?" And, per the terms of my probation, I have to answer yes. And, I just know that once I answer yes, that just goes in the garbage and I'll never hear from them again.

These types of comments about facing discrimination were extremely common regardless of the respondent's race, gender or criminal history. Dre's comment is especially poignant because as a case worker, he is familiar with labor laws in the state of Wisconsin, which explicitly prohibits discrimination against individuals convicted of a felony for a job that is not directly related to their offense (Love 2006). However, most of the respondents did not bother filing a complaint or taking legal action against employers and some didn't even view the discrimination to be unlawful.⁴ These results are wholly consistent with Pager's work (2003) that finds discrimination reduces the likelihood of a job

4. One respondent did file a complaint after being turned down for a sales clerk position at a local business that sold tires but the majority of our respondents had neither the will nor resources to take legal action against discriminating businesses. His case was pending but his situation was exceptional in that no other respondents responded to perceived discrimination via legal channels and most just accepted it as part of being an ex-felon or felon looking for work.

callback by as much as 50 percent in the Milwaukee area. Even though we found considerable evidence that discrimination plays an important role in the job search process for individuals with felon status, the primary purpose of this chapter is to explore the role of formal legal restrictions in blocking employment opportunities.

Some respondents reported viewing felon employment restrictions as a significant obstacle to stable employment. The data reveal that most of the respondents had less of an issue with the laws in theory but were resentful of their broad scope. Jack, the 39 year old Iraq War veteran, remarked,

You're limited to what kind of jobs you can have. Which is understandable. I can understand why somebody wouldn't hire me at a bank. You know, I can understand that. But, a lot of other jobs like—you know like—I can't understand like working in childcare. My offense was not—it didn't have anything to do with kids at all. So, me being a felon, why does that stop me from working with kids? You know? And different things that you know, you can or can't do. I think that uh, maybe you know, it should go according to the offense, not the status. You know what I'm saying if you're a misdemeanor you can do things but if you're a felony you know, you're limited. So, my biggest challenge has been you know, finding a job you know, getting people to understand who I am. What I did is what I did. It's not who I am. Prior to that point, I had never had a record you know, never been in trouble with the law. You know, and after that I never had a problem you know, with the law, you know. So, I mean you can look at that and see that this guy you know, he just had a bad situation you know—couldn't find a way out.

Yoyo, a 45 year old African American mother of three kids who had been incarcerated twice for welfare fraud and drug violations, wanted to get her licensure to become a medical assistant. After finding out she was ineligible due to her criminal background she complained about the length of the restrictions and stated,

I was just saying that I was hoping that after you did prove yourself for a certain amount of time, they should overlook [a criminal record]. You should be able to you know what I'm saying? If you don't get no sexual offense, like doing something to kids or elderly people, nothing like that, they should let you still be able to take that up, after you proved yourself and did good for a while. But I don't know.

Thus in most cases, it wasn't the existence of employment restriction laws but rather their scope and length that bothered respondents.

Respondents reacted in a variety of ways to navigate employment laws when looking for work. Damian, a 49 year old African American male who had been in and out of prison since he was 20 for numerous offenses, articulates his way of finding work despite restrictions which prevent him from working with his family.

[I]: Have you considered those laws at all when you're like applying for jobs, thinking, well, I can't work there because of my felony conviction?

[Damian]: Well, two jobs I had to turn down.

[I]: Oh, really?

Damian: Yes. I had a job at a day care. My P.O. says I couldn't work there. It's my family day care, and all's they want me to do is just ... when the kids out for recess, just stand outside and watch them, make sure no strangers don't come up to them. And I couldn't do that. And my... I have family members that have ... friends that have bars and clubs that want me to be a bouncer. I can't even do that.

[I]: So there's actually been jobs out there that you can't take.

Damian: My sister have a furniture store. She just starting off. It doing good. I wanted to do deliveries. My P.O. said because they not writing out a check to show me my hours, I couldn't work there.

[I]: Okay. And how do you feel about those kind of laws that prohibit you from having jobs like that?

Damian: It sucks because I have to sneak and do it. My sister get a job-... I don't hang out at the place. But when she get a job and if her husband's at work and she needs some help to load up a truck, I come down there, help her load up. She look out. But I basically do it because I don't want her struggling. You know what I'm saying? This is my youngest sister. Couple of times, if I do a couple deliveries, it might be a refrigerator or a bedroom set. You know what I'm saying? I can make my money by-... if the customers say could you put that up for me, I'll pay you, then that's how I make my money. I don't really make my money off my sister because she's burning gas in this big truck, and she might burn \$25 in this truck to get an item that's worth only \$75. So she not really making no money on some deliveries, but I'm still there for her, and I have to sneak and do it because I have to help my sister out until she can get better.

Damian's approach is to simply ignore employment restrictions in times when he feels he needs to help his family members despite the risk of violating the rules established by his parole officer. However, the risks of doing so include violating the terms of his parole and possibly even returning to prison. Many other respondents were far more averse to violating the conditions of his or her parole and chose instead to continue looking for another job.

Several respondents reported career aspirations that included nursing but after discovering that occupations in health and medicine are restricted, they had to try and find work elsewhere or even move out of Wisconsin to a state that does not restrict individual with a felony conviction from working as a nurse. Keisha, a 33 year old African

American female who was convicted of reckless endangerment, described the series of life events following her release from prison which included working in a strip club to make money and finally moving to another state to get licensed and find work as a nurse.

Actually, I received my CNA license in North Dakota. So, when I got out of prison [in Wisconsin] it was kind of hard for me to get my license because they said: well oh, you're a felon and you know you can't work in the healthcare field or around other people. But that wasn't true and I had, you know I did give up like hope like oh well you know, it was hard for me because I started dancing and everything because they were always discriminating against my background, my background, my background, so I'm like I have to survive some way. So, I went to North Dakota and they you know they care about your background, but they not so strict about your background. And so that was like one of my biggest things - I always like helping others and stuff like that and they gave me an opportunity. They paid for my training and everything. So, I actually went to North Dakota, got my CNA license and worked there for like two years, came here thought I could transfer because my mom got sick - and they wouldn't let me transfer my license. So, April of last year, I finally got approved to do my nursing license here so now I am certified for the state of Wisconsin now. But it took a whole lot to do and there's still a lot of jobs that discriminate on my background and my background is like eleven years old and I haven't been in no trouble since.

The expansiveness of employment restrictions coupled with parole officer discretion to prohibit employment in certain occupations effectively truncated the number of positions respondents could apply for. Employment restriction laws reduced the chances of securing employment in low-wage low-skill positions, as it did for James, a 24 year old African American male who was convicted of a drug offense, when he lost his current job as a school bus driver:

I was wondering why I was laid off and because I had caught my drug conviction a week after I turned 21 and I was wondering why I was laid off because I thought I could go off to work. But I can't do this or can't do that. Because I had notified them that I got arrested. And then they asked what kind of conviction it was and like they broke it down to me that I can't work around kids.

However, felon employment restrictions also depressed the job prospects for respondents that sought work in high paying white-collar positions. Paul, who has a MBA, is currently unemployed and receiving food stamps to help make ends meet but was attempting to get back into finance.

[Paul]: I had but I recently found out my area of expertise is financial services, being a financial advisor, being a stock broker or working for a bank, things like that. And, I recently found out that there are federal rules which prohibit those kinds of companies from hiring anybody who's a felon. So, even though I had been working my butt off applying for just those kinds of jobs—I probably applied for a couple hundred of them over the last two and a half years since I've been in Milwaukee. I just found out that the reason they were all rejecting me is because there is a federal law that says that banks and financial service firms like that, insurance companies. They can't hire felons.

[I]: Okay, so what types of jobs are you applying for now?

[Paul]: So, now I'm looking at two main categories: one to take advantage of my background in terms of where I used to work and what my educational training is and that's marketing, but those are the types of jobs where they tend to ask if you've been arrested or not and so then there's the other category of jobs which is anything and everything that is out there, that might give me a chance of being hired.

In sum, many respondents viewed an economic climate where qualified individuals without criminal records could not find work. Thus, from their vantage point what chance did they have? That certainly did not deter them from looking for employment as many respondents reported spending several hours a day searching for jobs. Yet their understanding of their own job prospects was often bleak as was their outlook on their chances to make it. The individuals we interviewed resonated clearly with the “ultra-realists” from Maruna’s work (2001) that tended to assess their situation pessimistically. However, despite realistic assessments of their own employment prospects, there was still hope that sooner or later, things would work out and their efforts to reenter the labor force would eventually pay off.

Conclusion

Although based on preliminary results, this study sheds light on the process of reentry for released prisoners focusing specifically on felon employment restrictions and their impact on racial inequality in the labor market. Upon release from prison, individuals with a felony conviction are legally prohibited from holding a wide array of occupations and employment positions. The rationale for felon employment restrictions is that individuals with felony convictions compromise public safety when occupying certain types of positions. While concerns for public safety are legitimate and should not be taken lightly, the range of occupations covered in these laws surpasses pragmatic policy choices. For example, in some states individuals with a felony conviction are potentially restricted from holding positions as a barber, an electrician, or even a taxi driver. Therefore, exploring the impact of employment restrictions can illuminate the far-reaching impact of current penal policies in the United States.

In the summer of 2007 alone, 900 prisoners left the Wisconsin penal system and reentered their lives in Milwaukee. At some point, it is likely these individuals will begin seeking employment in the Milwaukee area. They will face many barriers to employment process ranging from discrimination (Pager 2003) to the lack of employment experience (Visher and Kachnowski 2007), all of which diminish their chances to obtain stable and gainful employment. One barrier that has been almost completely overlooked by the sociological and criminological literature is the impact of employment and occupational restriction laws for individuals with a felony conviction. We contend that these laws contribute to joblessness in the Milwaukee area as well as broader patterns of unemployment and joblessness among African Americans across U.S. urban areas.

This study assesses the degree to which felon employment restrictions contribute to racial gaps in income and employment rates between African Americans and Whites. It identifies collateral consequences as being an important mechanism linking criminal punishment to racial and ethnic inequality. This study supports the contention that informal consequences of felon status such as discrimination and reduced levels of human capital intersect with formal legal restrictions to entrench large proportions of African Americans deep in disadvantage. Individuals with felon status face the difficult task of navigating life with a felony conviction which restricts them from fully participating in the labor force.

Employment restrictions also represent a concrete obstacle for securing stable and gainful employment, which has been shown to consistently accelerate successful reintegration. The issue of reentry and reintegration applies to all individuals who have completed sentences regardless of their race. But Black men with felony convictions, many of whom were already facing considerable disadvantages, face the challenges of reentry and reintegration at much higher levels than any other social group. Thus, the practical implication of this work is to carefully consider the utility and importance of employment and occupational restrictions and ensure that they are crucial for maintain-

ing public safety rather than simply another way to punish offenders after they have completed their sentence. Unpacking the factors that impede pathways to work may thus also shed light on the factors that lead to high reoffending rates.

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