Removing the Stigma of Past Incarceration: "Ban the Box" Laws

written by William Mosley | July 5, 2013

Picture yourself going into a job interview, as many readers of this publication no doubt recently have done or will do in the future. You have a solid record of experience relevant to the position, but you will still need to stand out in a large field of candidates for the same job. Imagine your employer asking the usual questions about your background and suitability for the job, which you handle with ease. Then comes the question: "You checked the 'yes' box for the question on whether you have been convicted of a crime. Why should we hire you when other candidates have clean records?"

Each year, over 700,000 Americans are released from the nation's prison system and returned to society at large.[1] Being freed from the unnatural and inhumane confines of prison should fill ex-convicts with optimism and hope. But for most former inmates, release brings with it the stress of a new challenge — re-integrating themselves into a society that is seemingly designed to cause them to fail.

But first, some background. Approximately one in four American adults have had some sort of brush with the law,[2] most often in their late teens or twenties. A disproportionate percentage of these consists of persons of color — according to the NAACP, African-Americans and Latinos together comprise 58 percent of inmates but only one-fourth of the U.S. population.[3] One in three African-American males born today can expect to spend time in prison at some point in his life, with men in their late teens or early twenties most likely to be arrested. An African American man without a high school degree is less likely to be employed than in prison.[4] Many of these men are the products of poor neighborhoods and troubled families where disincentives to antisocial behavior are weak or missing, and where the full weight of the law tends to fall on even minor transgressions. For these young men, even a minor crime can come with a life sentence of being nearly unemployable, since most job applications ask whether the applicant has ever been convicted of a crime. Those who check the "yes" box often find their resume landing in the trash.

Especially in the United States — which incarcerates more than two million people, more than any other country both in absolute numbers (even more than China) and as a percentage of the population[5] — ensuring that former prisoners can obtain gainful employment after release must be considered a critical part of their rehabilitation. To be sure, the U.S. criminal-justice system pays little more than lip service to rehabilitation; its primary emphasis is isolating prisoners from society, often with little attention paid to how they will fare once released. But the specter of hundreds of thousands of ex-convicts being dumped on the streets each year, many of them driven back to crime by lack of meaningful employment opportunities, should give everyone pause — especially given that of all persons arrested for alleged crimes, half of them have prior convictions.[6]

Advocates for ex-prisoners viewed job discrimination against the formerly incarcerated as a civil rights violation. Why, they ask, should employers be allowed to shut out qualified job seekers who, although once imprisoned, had paid their debts to society? By the late 1990s they had begun to

press for “ban-the-box” laws, under which employers would be allowed to ask about criminal records only after an interview — and deny employment only if the conviction indicated the applicant would be unsuitable for the specific job. For instance, an embezzler could be denied a job handling money, and a child molester could be kept out of a daycare center. But no one could be routinely denied employment for, say, a teenage drug-possession conviction.

The first statewide ban-the-box law was passed in Hawaii in 1998, banning both public and private employers from asking about an applicant’s criminal record until after being offered employment. The idea spread, if not exactly like wildfire; since then seven other states have adopted similar measures — although only one state, Massachusetts, goes as far as Hawaii in banning discrimination by both public and private employers; the laws of the other states (California, Colorado, Connecticut, Minnesota, New Mexico and Rhode Island) apply only to hiring by state agencies. In addition, over 40 cities around the country have passed their own municipal versions of the law. Most “ban the box” for only city hiring or for vendors who do business with the city, but a few — including Philadelphia and Newark, N.J. — also cover private employers in their bans.[7] One of the latest cities to pass a ban-the-box law for municipal employees was Richmond, Va., which adopted its measure in late March.

Earlier this year, the District of Columbia considered and then rejected a proposal to extend its ban-the-box law, currently covering only applicants for jobs with the city, to also cover private employers. The bill was proposed by DC Councilmember and former Mayor Marion Barry — himself an ex-offender, having been convicted for crack cocaine possession in 1991 following a celebrated FBI sting, as well having pled guilty to tax evasion in 2005 (he served prison time for the former offense but not the latter). Cynics have said Barry’s sympathy for ex-convicts stems from his own run-ins with the law. But it’s more likely that he drew his inspiration from his long career as an elected official serving mostly minority citizens, many of them suffering under employment discrimination due to their own criminal records — including Barry’s current constituents in DC’s Ward 8 with its high concentration of poverty and overwhelmingly African-American population. His activism, prior to being in elected office, in SNCC and the Free DC movement (which advocated home rule for the District) also undoubtedly contributed to his viewing discrimination against ex-convicts as a civil rights issue. Nevertheless, the influence of the DC business community was sufficient to kill the bill.

It is understandable that many employers might believe it is in their interest to avoid hiring ex-convicts. But it also is in the interest of society at large to reintegrate ex-convicts into society, and to stop adding to the large underclass of former prisoners with minimal prospects of earning an honest living.

Studies are lacking on the impact of ban-the-box laws on recidivism. However, when one looks at crime trends in Hawaii, the state with the longest experience with these laws, it’s notable that overall crime rates and the rate of property crime have declined dramatically — by 32.0 and 34.4 percent, respectively — since the law was passed in 1998, compared to nationwide declines of 28.6 percent in overall crime and a 28.2 percent in property crimes. Crimes against property — burglary, larceny and vehicle theft — are what one might expect less of if ex-convicts are able to find work in the legal economy. (Interestingly, Hawaii’s rate of violent crime has risen over that period, while that of the United States as a whole has dropped).[8]

Of course, helping ex-convicts find legal employment should be only part of the reform of the prison-industrial complex. Other problems abound: the lack of meaningful training and rehabilitation opportunities in prison, the trend toward prison privatization (which provides a financial incentive for prison-owning corporations to lobby for more incarceration and harsher sentences) and the tendency of government to view low-income communities of color as largely law-enforcement

problems rather than people in need of jobs, education, health care, better housing and other services that affluent Americans take for granted. Nevertheless, ban-the-box statutes could provide a first step toward breaking the stranglehold of past mistakes on millions of Americans' future life prospects.

Footnotes

1. Travis, Jeremy. "Rethinking Prison Education in the Era of Mass Incarceration." Keynote address delivered at the University Faculty Senate Conference on Higher Education in Prisons, City University of New York Graduate Center, February 4, 2011.
2. National Employment Law Project website.
3. NAACP Criminal Justice Fact Sheet.
4. Western, Bruce, "The Impact of Incarceration on Wage Mobility and Inequality," *American Sociological Review*, August, 2002.
5. Liptak, Adam, "U.S. Prison Population Dwarfs That of Other Nations," *New York Times*, April 23, 2008.
6. Roots, Roger, *When the Past is a Prison: The Hardening Plight of the American Ex-Convict*, University of Nevada-Las Vegas, Department of Sociology.
7. National Employment Law Project website.
8. United States Crime Rates 1960-2011, disastercenter.com.