

laborers want the same opportunities as other labor, and we are the makers of the rules under which both civilians and incarcerated workers operate.

At its heart, unfairness and fairness both arise from public policies that we control. And the heart of promise lies in fairness, simply meaning *applying to incarcerated labor and incarcerated business (prison industries) exactly the same rules as for civilian business and labor. If the rules are the same, the competition is fair.*

5. The Good That Can Be

21st Century “Prison Labor,” Full Integration into Civilian Labor Force, Indistinct in Law and Regulation from Other Labor Rights, Protections, and Obligations.

Summary Scope: The exact net dollar damage to US GDP emanating from inmate exclusion from the civilian labor force, that is, expelling incarcerated persons from participating in the civilian economy, is unknown and subject to widely varying definitions, assumptions, and measures. Statistics are at the very best highly tentative. However, at least conceptually accounting for the GDP-reducing effects of --

- Productivity reductions among affected offspring of the incarcerated as a result of parental incarceration (succeeding generation effects);
- Productivity reductions from post-arrest and pre-conviction disruptions of persons who did spend time incarcerated (pretrial damages);
- Productivity reductions resulting during the time of incarceration;
- Productivity reductions from reduced education, training, and employment experience and advancement during criminal justice involvement;
- Productivity reductions post-incarceration from incarceration experiences plus post-release discriminations (post-release damages); and
- Multiplier effects downward on GDP - at least conceptually doubling any direct losses from the direct negative effects on inmate productivity and purchasing power.

On any given day approximately 2%, about 2.2 million, of US working-age males are incarcerated and held out of the US labor force, directly suggesting maybe a 1% (male + female) depressing effect on GDP assuming these persons could have been educated and trained in the same general proportions of other men and Then assuming a conservative multiplier of 2 (a doubling), suggests a roughly 2% overall decrease in US GDP as a direct result of current US labor force exclusions via incarceration, Finally, considering that 8-10 percent of all working –age men have been incarcerated at some point in their lives and take some reduction in productivity from those experiences, my personal “best guess” sufficient for serious reflection and policy changes, is that ***overall the United States likely suffers a 3-4% net loss in annual GDP from the direct and immediately indirect productivity costs of inmate exclusion from the labor force, both from immediate consequences for the person and family plus the consequent doubling from similar “multiplier” effects on other “civilian” labor, business, and the economy.***

Said otherwise, the US is hobbling along, in effect, as if it were shutting down the equivalent economies of, say, Minnesota and Wisconsin, leaving us limping forward on a 48 state economy.⁵

And the direct implications of these persons’ absence and underperformance are decreased GDP, reduced consumption and investment, stunted business and labor expansion, increased welfare, tax, and healthcare burdens, reduced retirement investment, reduced global competitiveness, coupled with increased poverty, inequality, homelessness, mental illness and health of the populace, all hitting especially hard women, children, the elderly, minorities, and the poor and struggling persons, families, and communities. Within the criminal justice system their absence tends to correlate with higher recidivism and crime, unpaid court costs and fines, and the legitimate restitution claims of crime victims

⁵ Statistics on the economic consequences of incarceration are notoriously difficult to obtain. However, one useful assessment is contained in *America’s Invisible Crisis, Men Without Work*, by Nicholas Eberstadt (2016, Templeton Press), chapter 9, “Criminality and the Decline of Work for American Men,” including estimates of 16 million felons and ex-felons, and 12 percent of all working age adult males having felony convictions. The November 14, 2019, edition of *The Economist* includes in “Why States are Rushing to Seal Tens of Millions of Old Criminal Records,” estimates of 70-100 million persons, 1 in 3 adults, as having a misdemeanor or felony record, and separately, \$78 billion lost from GDP (Note, with US GDP now over \$20 trillion a year, the Economist’ estimate of GDP loss is less than 1% of GDP while my “best guess” of 3-4% suggests \$300-\$400 billion, but almost certainly includes a much broader conceptual array of effects, not the least of which are multipliers.)

unmet. Fragile families of releasees, additionally burdened with unpaid fines, court costs, interest, child support arrearages, and restitution obligations, all too often find needed breadwinners disappeared and families fractured.

The Economists' Proposal: *Recognizing labor force exclusion overall as a counterproductive economic discriminatory rider grafted into the criminal justice system, the overall efficient (fair) and effective remedy is to strip legal employment restrictions from all phases of the criminal justice system and instead treat the legal employment and economic success of persons throughout the criminal justice system as a normal economic and social priority to be protected and nurtured for offenders just as for others - within the bounds permitted while protecting safety.* The impossible goal toward which we would work is that in which no criminal justice action would interfere in any way with economic efficiency. In theory at least, even the worst criminal offender would continue his or her civilian employment, including in management or ownership, as if no criminal offense whatsoever had occurred, to the degree permitted by safety.⁶

And as a critical corollary, all firms for which an incarcerated person is employed would be subject to normal civilian law and regulation such that traditional prison industries that we know today ultimately merge entirely into the competitive civilian taxpaying economy.

Notable features include –

Mainstreaming/Normalizing Inmate Employment: As a practical matter, therefore, this is a proposal that “prison industries” and “prison labor” disappear entirely in

⁶ At first the idea of continuing civilian employment sounds uncontroversial when keeping persons employed and financially responsible while in the criminal justice system, for example for the plumber or accountant or teacher or physician, who remains employed by day and “serving time” separately. And it certainly means removing professional disbarments in many many cases. But it becomes more controversial when the offenders are wealthy and the offenses notorious. Contriving examples, suppose Mike Tyson had been permitted to continue training and fighting while incarcerated, or that Bernie Madoff had been welcomed in continuing to lead and operate his separate legal enterprise. In each case tremendous benefits might have been obtained, as in Madoff eventually paying back many millions legitimately owed. But what then for the currently popular behavior of dismissing highly successful corporate heads and artists credibly accused of sexual harassment? Or boycotting criminally offensive firms? The argument presented here tends to argue for not impeding GDP enhancing behaviors to the extent that criminal behavior can be corralled while legal productivity continued.

favor of the normal economic and social priorities of maximally productive legal employment for firms in the normal civilian economy.

Critical features include –

- Keeping persons in the criminal justice system in their homes and communities as both economic and “justice” priorities. Rather than seeking opportunities to separate persons, it becomes a criminal justice priority to facilitate and nurture legal economic success and financial responsibility within the community. As a practical matter, for example, at least 50% of persons now incarcerated would instead be living and employed outside traditional prisons and in their own homes and communities, to the extent permitted by protecting safety. And where safety requires stronger containment, then locating correctional facilities near jobs, typically in or near cities, and designing facilities and correctional priorities to maximize employment in the community (work release), or where necessary, inside facilities that themselves are conducive in location, design, and operation to maximize productivity and employment.
- **Normalize Education:** The normal “civilian” opportunities for education and training for which otherwise qualified incarcerated persons would be eligible, financed in normal ways, provided by the same institutions (and in the same civilian locations) as for others.
- **Welcome Organized Labor:** Persons in the criminal justice system equivalently belong to bargaining units of unionized civilian firms both outside and inside the walls of correctional institutions, and organized labor is recognized as a partner in healthy corrections rather than opponent of incarcerated workers. Conceptually welcoming organized labor includes apprenticeship programs and some role in public oversight (This feature is silent on “prisoner unions” and refers only to employees facing their private or public-sector employers along with other bargaining unit members).

6. Background Information: