

for defense, health, education, infrastructure, and other priorities at the federal, state, and local levels.

- **Losers:** While integrating offenders seamlessly into the productive legal economy will benefit virtually every segment of society, including corrections and correctional industries, there will be losers, namely all those persons and entities tied to the mast of preserving traditional prison industries and their suppliers (and some customers). Careers and livelihoods dependent upon traditional prison industries are clearly endangered. In addition, as a practical matter, changing inmate employment to normal participation becomes much more politically difficult for all the well-known reasons: traditional prison industries both have the most to lose *and are the socially empowered protectors, gatekeepers, and politically connected current representatives of inmate work for whom changing from protected monopsony to the competitive marketplace is the most fraught.*

2. Background Summary Facts³:

Approximately 2.3 million adults, 92% male, occupy US jails and prisons on any given day. Nearly 50% were legally employed at time of arrest. Hundreds of thousands held responsible professional or trade positions before incarceration. However, only a fraction of 1% hold civilian jobs in work release, such that virtually 100% of US inmates today are excluded from civilian employment and Fair Labor Standards Act (FLSA) protections. About 60 percent of all US inmates have no “prison labor” assignment whatsoever, hence \$0.00 annual income, and for the remaining 40% in institutional maintenance or traditional prison industries, their average *annual incomes* appear less than the weekly income of the median American employee, and without any employee benefits.⁴ During incarceration, inmates are considered voluntarily unemployed and out of the civilian labor force, meaning that child support arrearages accumulate plus interest compounding for

³In general, relevant data are difficult to obtain, fragmented, inconsistently defined and measured, and representing different times. Data in this exposition reflect my understanding and should not be considered necessarily accurate. The reader is encouraged to independently obtain data, and I welcome insight and corrections.

⁴Legally, prison laborers are not employees and are not paid, but receive “gifts” or “gratuities” of the state.

child support, fines, and other charges. About 50% of US incarcerants have unsupported minor children, such that there are more unsupported minor children of US inmates (estimated 2.5 million) than inmates. However, in contrast to most families, rather than the working-age parent supporting children, for America's inmates, therefore, resources flow in reverse, from children and households to dependent incarcerated adults.

3. Current Law, Custom, and Social Deliverables – All That's Wrong Today

Perhaps the first best thing to learn about the US Constitution and primary Federal prison labor law is that both are largely irrelevant for day-to-day Federal, state, and local prison labor practices, which are driven almost entirely by a culture of discrimination and facilitated by prison industry's monopsony (exclusive) buyer relationship with the captive labor force.

Purportedly the United States' Constitution, Federal, state, and local laws, and regulations underlie contemporary exclusion of incarcerated American adults from employment in the civilian labor force, the two major being -

1. **The US Constitution, 13th Amendment, slavery exception clause:**
“Neither slavery nor involuntary servitude, *except as punishment for crime whereof the party shall have been duly convicted* [italics mine] shall exist within the United States...”
2. **Ashurst-Sumners Act of 1935 (Title 18 USC 1761(c))**, making transport of prisoner-made goods in interstate commerce a Federal criminal offense:...”Whoever knowingly transports in interstate commerce ...any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners...shall be fined under this title or imprisoned for not more than two years, or both.”

However, in fact neither prevents a willing nation from accommodating inmate employment should we choose to do so.

Constitution: First, contrary to convoluted popular impression, the 13th amendment slavery exception permitting *forced* work, has nothing whatsoever to