

The Economics of Inmate Labor Force Participation

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The George Washington University

The Center on Crime, Communities & Culture, of The Open Society Institute

Chapter 1

Background

Introduction

Most objections to jail and prison inmate open-market employment are fundamentally either economic or criminal justice objections. The May 21, 1999 National symposium, “The Economics of Inmate Labor Force Participation,” addresses the root economic question, whether allowing inmates to compete for (participate in) open market jobs is good or bad for the economy. Except for briefly touching on recidivism and rehabilitative effects, the project does not address criminal justice issues relating to inmate employment.

For the symposium, prominent mainstream U.S. economists provide introductory opinions and propose economically beneficial general policy directions for inmate labor force participation. The symposium also includes panelist views representing stakeholders affected by inmate labor policies, plus limited feedback from symposium participants.

The symposium was funded by the Center on Crime, Communities & Culture of the Open Society Institute (OSI) as part of its efforts spurring public debate on important issues affecting crime, poverty, and inner cities.

The event was hosted by the George Washington University Department of Economics, which also monitored project interactions with the economists.

Background

Either by law or custom, inmates in U.S. jails and prisons are barred from open-market jobs. In addition to state prohibitions, the most stringent Federal restriction, the Sumners-Ashurst Act of 1948, prohibits the transport of prison-made goods in interstate commerce. Although a succession of Federal and state changes, beginning with “The Percy Amendment” in 1979,¹ allow inmates to hold open market jobs under specified conditions, fewer than 3,000 of the nation’s 1.8 million local, state, and Federal adult inmates held open market jobs in 1998.¹ About 600 thousand work in prison upkeep or in

¹ Excluding about 40,000 inmates estimated to be on work release near the ends of their sentences. Source for inmate employment: draft, “Inmate Labor in America’s Correctional Facilities, A Preliminary Report of

traditional prison industries serving government purchasers. Inmates working in traditional prison industries go unpaid or receive small gratuities, usually far less than a dollar an hour.

Current arguments, particularly as articulated by business, organized labor, and human rights groups, generally oppose inmates holding open-market jobs. Primary objections arise from a criminal justice perspective (Unemployment is “good punishment”), for reasons of human rights (Prison labor is exploitative or abusive), or on economic grounds (Inmate employment takes jobs from civilian labor, is exploitative or abusive, and drives down the civilian wage rate).

Privately-owned industries oppose prison industries – and by extension, inmate employment – primarily because prison industries receive advantages (subsidies) not available to taxpaying firms, including exclusive rights to government markets, taxpayer provided land and capital equipment, exemption from taxes and regulation, and exemption from virtually all pay and benefits for the incarcerated labor force.

Organized labor generally opposes inmate labor on economic grounds, seeing the involuntary, unpaid, and unprotected inmate labor force – whose living costs are paid by taxpayers - as unfairly competing against civilian labor. Unions also oppose using inmate labor as strike breakers or to otherwise weaken unions, and they oppose prisons abusing the labor force with coercion, low or no pay or benefits, reduced conditions of safety and protection, and utter powerlessness (including a prohibition against union membership).

Human rights groups, such as the National Prison Project of the American Civil Liberties Union, generally oppose prison labor as a form of slavery, exploitation, and abuse. Further, human rights groups are particularly concerned that the state will use inmate earnings to fund additional expansion of the U.S. prison system.

Others see gains in inmate work. Foremost, corrections agencies strongly prefer inmate work to (1) cost-effectively reduce idleness – and prison violence, and (2) educate and rehabilitate inmates. Interestingly, unionized prison staff tend to prefer inmate work for the sake of improved inmate morale and safety, and thereby temper broader union opposition. Representatives of inmates often favor the education, training, discipline, and income – however slight – offered by work. And some argue that it is not employment but inmate unemployment that harms the economy, by reducing National output, reducing consumer opportunities and raising prices, decreasing civilian job opportunities and slowing employment growth, increasing welfare and taxes, and undermining both the economic welfare and the social fabric of low-income homes and communities, especially inner cities. They see inmates’ absence subtracting about 2 percent from the male labor force, de facto denying compensation to crime victims, leaving more unsupported minor children of inmates than inmates (about 2.2 million), shifting the

the American Bar Association’s Subcommittee on Correctional Industries,” Washington, D.C., April, 1998. Source for inmate population: U.S. Department of Justice, Bureau of Justice Statistics Bulletin, “Prisoners in 1998,” NCJ 175687, Washington, D.C., August, 1998.

financial burden of supporting inmates and their children to taxpayers and about 1 million mostly lower income females (the mothers and grandmothers of inmates' children), and creating "unemployment" equaling 20 percent or more of the poorest neighborhood's minority male populations. They see inmate and inmate family poverty reducing the demand for goods and services, thereby reducing civilian employment and costing the Nation hundreds of thousands of civilian jobs. They also see inmate unemployment spawning conditions for future crime.

To date, inmate open-market employment has been minimal. Enabling legislation, overseen by the Federal "Prison Industry Enhancement Certification" (PIE) program, now allows private firms to use state and local inmate labor if the employment is voluntary, it pays locally "prevailing wages," does not displace existing civilian employment, requires consultations with business and organized labor, and imposes deductions from inmate earnings for taxes, victims compensation, board and room, and child and family support. About 40 states now permit inmates to hold open-market jobs under PIE requirements. Yet after more than twenty years, fewer than 3000 inmates - about two tenths of one percent of the Nation's 1,800,000 jail and prison populations - hold open-market jobs. And many of those jobs are hotly contested, with private businesses arguing that prison-facilitated firms are, in fact, displacing existing civilian employees and firms.

Further, while enlightening and illustrating stakeholder good will, an ongoing series of meetings, working groups, and forums on the subject has little budged public policies or noticeably softened debate.² Action on inmate employment appears stalled.

Therefore, in order to gain deeper understanding of at least some critical facets of the debate, and in order to spur more effective debate and policy change, more intense focus on clarifying economic aspects of inmate labor policies was devised.

The Symposium, The Economics of Inmate Labor Force Participation

Design

Believing that (1) economic issues are central to the debate, (2) non economic aspects could be better understood if economic aspects were clearly distinguished, and that (3) entangling economics with other issues is a common source of confusion, the symposium and these written opinions on "The Economics of Inmate Labor Force Participation," were designed to focus on economic features of inmate labor.

Other critical design features include -

² Recent ongoing groups include the American Bar Association Correctional Industries Subcommittee and the National Working Group on Inmate Labor (NWGIL); National meetings of the Correctional Industries Association (CIA) and the American Correctional Association and the May, 1998, "National Prison Industries Forum" in Washington, D.C. showcase recent debates on prison industries and inmate labor.

- The basis for judging “good” or “bad” is *competitive economic theory and experience*, accepting the objectives (primarily maximizing production of goods and services), means, and analytic tools of conventional Western economics. Positions reflecting a general opposition to the competitive model are excluded; for example, Marxist labor views would not be persuasive in the symposium setting.
- Economists are chosen for their *general prominence* in mainstream economics and not for views on inmate labor force participation. The choice reflects an intent to view inmate labor primarily as a standard economic issue.
- The process intends to be *objective* and *neutral*, beginning with the questions asked and the economists invited, and accepting whatever outcomes occur, so long as they emanate from competitive mainstream economics. For example, no economist was identified, interviewed, or chosen based on any declared or presumed position on inmate labor force participation.
- The primary focus is on *persons* as economic participants and not on institutions, that is, on the labor force participation of persons who are incarcerated, and not on the prison industrial structure in which employment occurs.
- The principal focus is on *labor force participation*, that is, the right to compete for employment, and not on the right to have jobs or to be “given” jobs.
- The focus is *overall economic consequences* and not criminal justice effects; therefore, the focus is on national output, income, and employment, as well as on broader economic consequences for major affected groups.

In sum, the design differs from typical debate in that it treats inmate labor as a standard economic issue in the broad context of general economic efficiency and not as a criminal justice or correctional issue. Therefore, economic consequences for Gross Domestic Product, employment, prices, and income are of greater importance to this presentation than traditional features such as prison order, rehabilitation, and compensation. By extension, the design emphasizes broader classes of economic winners and losers not traditionally identified or considered in inmate labor debate.

Throwing the issue of inmate employment into the general sphere of economics has the additional advantages of (1) setting the debate into a context and broader experience familiar to many, and (2) making the issue of inmate labor addressable by a far wider body of expertise than traditionally involved. Both for learning and for political utility, public policy makers, opinion makers, journalists, corrections and correctional industry representatives, and stakeholders of every stripe can turn to local universities, economic research groups, think tanks, and others for assessments, insights, and guidance on the

issue of inmate work, all while providing stakeholders from many sectors a common ground for review, analysis, and communication.

Although not originally highlighted, effects on future crime and recidivism became a prominent feature of the *economic* discussion, in the context of the economic costs and benefits of reducing future crime.

- A secondary objective of the effort is to entice the economics profession into more extensively examining issues of inmate labor and prison industries. Therefore, recognizing that the selected economists are not specialists in the area, their views for the symposium should be seen as *introductory opinions* clearly subject to additional insight and modification.

Recruiting economists began in late 1998 and concluded in January 1999. In March, the George Washington University (GWU) Department of Economics agreed to host the symposium and monitor interactions with the economists. The economists exchanged first drafts in late March and April; CRS staff briefly joined the interchange in late April, asking questions and recommending clarifications, in all cases monitored by GWU.

Two additional features joined the symposium late in the process. First, in order to represent key stakeholders within a tight schedule, the symposium added a panel of expert stakeholders, including of taxpayers, children and families, minorities, women, inmates, prison industries, business, and labor (Representatives of victims and the elderly were invited). Stakeholders were invited to represent the effects of actual and proposed inmate labor policies on constituencies of importance. Second, although interactive discussion among participants was always anticipated, professional facilitation services were added in early Spring.

The symposium was moderated by Amy Kaslow, an independent broadcast journalist on national and international economics issues. Ms. Kaslow is a regular contributor to National Public Radio's "Marketplace"; from 1989 to 1996, Ms. Kaslow was the lead economics correspondent for The Christian Science Monitor.

The Questions

Each economist was asked to explicitly address four questions:

1. Applying your economic specialty, and separate from any criminal justice costs or benefits, are bans on prison inmate labor force participation "good" or "bad" for the U.S. economy? Please explain, identifying economic winners and losers, and state your opinion of the net overall economic gain or loss to the economy, along with any important limitations on the opinion.³

³ "Good" or "bad" came to be interpreted as with respect to output of material goods and services as measured by Gross Domestic Product (GDP), though its intended meaning by CRS staff was to distinguish

2. Specifically, from your economic specialty, will expanded inmate participation in the economy create, destroy, or have no effect on civilian employment in the United States? Explain.
3. Applying your economic specialty, what steps are essential to improve the economic contribution of the incarcerated labor force?
4. If there are any criminal justice or correctional effects distinguishable from economic aspects, please identify and explain them, particularly their effects on net social benefits or costs.

material goods and services from immaterial economic “goods” such as the satisfaction from discrimination, punishment, or preference for dealing with some persons over others.