

An Economist Looks at US Prison Labor Reform

(January, 2020)

“My narrow economist’ conclusion is that current US prison labor policy is inefficient; my fuller human conclusion is that it is also genocide.”

“The primary economic argument for totally excluding all US jail and prison inmates from civilian jobs is unfair competition to civilian labor and business:

- ***Inmate labor will drive down civilian wage rates;***
- ***Inmate labor will take civilian jobs; and***
- ***Inmates do not deserve civilian jobs.***

All these arguments fail fundamental economic tests and instead exhibit classic discrimination, well recognized as harmful to the economy, employment, and business expansion, and especially harmful to the discriminated communities.”

“We Americans need to face the horror of our US policy barring inmates from all jobholding. We are creating ghettos for prisoners, their families, and their communities. Rooted in racism, we are especially targeting the poor and vulnerable. And in permitting no exceptions and allowing no income, our discrimination against incarcerated workers is intrinsically far worse than discrimination against racial minorities and women. We are violating basic human rights, approaching genocide, by denying inmates and their children and families access to means necessary for their contemporary survival.”

“The side of a prison wall is irrelevant to rules of economic efficiency and performance. A person’s “best legal employment” outside prison is the identical “best legal employment” into which corrections and society should position that person while incarcerated (or anywhere in the criminal justice system).”

Prison Labor Reform, propelling America’s incarcerated adults into successful legal employment and financial responsibility, is the single most powerful, cost-effective (profitable and revenue creating), and widely rewarding economic growth - and poverty and inequality reduction - policy available to the United States today, and when understood, widely acceptable, to both the left and the

right, to business and labor, to human rights, to policy makers, and to the general public.”

“Although ‘prison labor’ sounds like any work performed by prisoners, a better perception is ‘work performed by prisoners under rules exempting them and the firms engaging them from normal labor protections, rights, and wages.’

‘Employment’ may be the same work performed by the same prisoners, but under civilian labor force protections, rights, wages, and firm obligations.

Hence, ‘prison labor’ and ‘employment’ are distinguished by the rules governing the incarcerated workers and not by the fact of incarceration.”

Tom Petersik

1. Introduction:

This is a personal economics exposition whose core is the (\$) GDP consequences of current US prison labor policy excluding all US inmates from employment in the civilian economy. The content here highlights my views and not the fuller relevant literature, although my intent is to eventually incorporate critical material other than my own. I'll add material and welcome comment as I can.¹

It concludes that current US prison labor policy fails fundamental tests of economic efficiency, thereby - in stark contrast to popular opinion - slowing US economic growth, including slowing business and jobs expansion, and at the same time unmasking US inmate exclusion as textbook discrimination, especially damaging to the poor and marginalized.

The examination concludes recommending that, to maximize GDP, incarcerated persons be mainstreamed without difference into the normal civilian economy, covered by exactly the same laws, regulations, institutions, and obligations as other employees, and integrated seamlessly into the labor forces of normal, taxpaying civilian US firms, including into the bargaining units of unionized firms, educated and trained to their best legal occupations via the same institutions as others. In effect and over time, traditional prison industries should end.

Further, this core exposition ultimately expands from incarceration alone to address legal employment opportunity all across the entire criminal justice system. Always accounting for the primacy of safety, expelling persons from their best legal occupations should be minimized altogether, from arrest through post-release, ending the whole array of wrenching employed persons from jobs, disbarments, job disenfranchisements and barriers, and expulsions. By extension, this same argument also questions the wisdom of our contemporary penchant for terminating prominent legal careers, such as for Mike Tyson Inc. or Bernie Madoff's successful legal operations. It also by extension questions the wisdom of total expulsions of

¹ Correspondence Policy: Views of others and correspondence are welcomed via e-mail at _____. For the time being, I will decide which gets added to this missive for wider access, but my hope is to welcome thoughtfully put views and appropriate revisions.

fallen luminaries like Matt Lauer, Harvey Weinstein, Roger Ailes, and a growing list of others. At a minimum this broader application serves to remind us that our preference for firing and disbaring “captains of industry” malefactors comes at a notable cost of slowing economic growth and exacting penalties on the economy far beyond the offender (particularly for innocent employees of the firm, its suppliers and customers, and denying deserving victims restitution and compensation), perhaps suggesting we find less socially costly than “scorched earth” paths of economic punishment well outside criminal justice sanctions.

In addition this exposition, over time and as resources allow, intends to more fully address –

- **Human Rights, including of Children:** Fully consistent with competitive economics, this exposition explicitly addresses the issue of basic human right of access to the means of survival, concluding that the present complete expulsion of incarcerated persons from job access (US inmate median annual income \$0, average for working inmates less than \$1000 a year) approaches the broader bounds of genocide and constitutes a severe violation of basic human rights for offenders, their families, and communities. Remembering that there are more unsupported minor children of US inmates than inmates, statistically the exclusion of inmates from the civilian labor force is primarily a *child* human rights and poverty issue, for whom parental incarceration ranks as one of ten primary correlates of child trauma.² [Elaine Waxman of Urban Institute – Food stamp person, on TV talks about incarceration]
- **Public Policy Benefits:** Removing discrimination provides a fully market-based and widely politically attractive impetus to employment of among the poorest and most-difficult-to-reach subpopulations, reaching less educated and experienced males, single female householders, senior householders with minor children, minorities, the homeless, the mentally ill, and others, thereby raising incomes and lowering taxpayer health and welfare burdens, increasing tax revenues, and thereby increasing resources

² See “stopabusecampaign.org,” 10 correlates of child trauma, “Adverse Childhood Experiences” (ACE).

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.