

Prison Labor

It's More than Breaking Rocks

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Six years after President Clinton signed legislation ending welfare as we know it, which replaced the unconditional entitlement to cash aid with temporary cash aid conditioned on work, it is ironic that there is one major group in society that still gets public support without a work requirement—prisoners. While our nation has made great strides in the last few years to move welfare recipients from dependency to work, surprisingly, we're moving in the other direction when it comes to transitioning prisoners to paid work. Fearing competition from prison labor, union and business interests have mounted an aggressive lobbying campaign to roll back paid prison labor, in spite of the fact that it can provide convicts with useful skills they can use upon release while at the same time helping to offset some of the cost of housing prisoners.

While the number of prison workers has increased over the years, only a modest share of state and federal inmates work at jobs for pay. There are approximately two million prison and jail inmates in the United States. The Federal Prison Industries (an arm of the Federal Bureau of Prisons) employs approximately 23,000 inmates out of a total of 157,000 prisoners. Approximately 65,000 inmates work in state prisons, but only 3,700 prisoners (in 36 states) are employed by private-sector companies.

Even though the number of prison inmate workers is relatively small (less than one-fiftieth of 1 percent of the civilian workforce), opposition to prison labor has been growing from affected industries and unions. Both groups not only actively oppose expansion of prison labor, but have supported legislation to dramatically restrict the programs run by Federal Prison Industries (FPI). Both argue that the current situation provides unfair competition. This view has

gained increased credibility among policymakers, in part based on the inaccurate view that prison labor versus civilian labor is a zero-sum game and that growth in one comes at the expense of the other. Applying a growth economics framework, it is clear that expansion of prison labor can be good for the U.S. economy, increasing total employment and Gross Domestic Product (GDP), while not reducing private sector employment levels.

Just as Congress should not give in to protectionists on trade, they should not give in to protectionists on prison labor. There are three main reasons why Congress should expand, not reduce, prison labor. First, there is clear evidence that prisoner work requirements lead to lower recidivism. Second, the revenue from prison work can and should pay for the costs of housing them in prisons as well as victim restitution, child support, and the like. Finally, because it leads to increased production of goods and services, prison labor helps spur the U.S. economy. Notwithstanding the fact that prison labor can be good for both prisoners and the economy, the current FPI program is in need of significant reform. A new prison policy should:

- ▶ allow private sector companies to employ prisoners in state and federal prisons at least at the minimum wage to make virtually whatever product or service they want to and sell it to whomever they choose;
- ▶ lift federal restrictions on the interstate transportation of goods and services produced in state prisons;
- ▶ subject federal and state prison workplaces to Occupational Safety and Health Administration (OSHA) inspections;

- ▶ institute an FPI ombudsman program to investigate complaints by workers about unfair working conditions;
- ▶ extend the Trade Adjustment Assistance Act to cover workers displaced by prison labor; and
- ▶ mandate that all federal prisoners who can work do work, provided that work is available.

The History of Prison Labor

Prison labor has its roots in the 1800s, when inmates worked for private companies without pay. For example, by 1890, convict leasing in Alabama had become a significant operation, particularly focused on black prisoners. (White men usually remained inside the penitentiary or local jail.) In other cases, such as a labor dispute at the Tennessee Coal Company in 1891, prison labor was used to break strikes. Prison labor was not about rehabilitation or fostering a safer prison environment, it was about getting revenue to pay for prisons. And not surprisingly, given the lack of legal and other safeguards at the time, there were significant abuses. After hundreds of prisoners in various states died on the job due to hazardous conditions, unions and prison reformers rightly demanded a halt to the practice.

As in so many policy areas, the federal government got involved in the issue during the New Deal era. The 1935 Hawes-Cooper Act created FPI as an arm of the Federal Bureau of Prisons and allowed it to employ federal prisoners in making goods for sale to the federal government. However, because the legislation was passed during the Depression and was motivated by the fear that private jobs would be lost to prison labor, it outlawed interstate trade in convict-made goods (except if sold to the federal government) and placed a number of other restrictions on FPI.

In response to the need to provide prisoners with more work opportunities, Congress passed the Justice System Improvement Act in 1979. Among other things, the Act repealed a number of the limitations imposed by the

Hawes-Cooper Act and created the Prison Industry Enhancement Certification Program that allows prisons to link up with private companies. In particular, the bill permitted states to create prison work programs whereby prisoners would be eligible to be employed by private companies. Deductions could be made for room and board, federal and state taxes, family support, contributions to a state's crime victim fund, and contributions to an interest bearing account that the inmate might use upon release from incarceration. However, in response to opponents who complained about competition with business, the legislation contained a number of restrictions: inmates must be paid the local prevailing wage and given comparable benefits; written assurances must document that non-inmate workers will not be displaced or severely impacted; and organized labor and local private industry must be consulted before startup. Given these restrictions, it is not surprising that private sector employment of prison labor has not grown significantly.

Both supporters and opponents of prison labor agree the debate over prison labor is at a critical juncture; employment in prisons could increase greatly in the coming years as prison populations rise. Moreover, in recent years, there has been growing criticism of FPI, not only for competing with business, but also for how effectively they are carrying out their mission of employing prisoners. As a result, Congress has been looking carefully at the issue of prison labor, especially as it relates to FPI. Under the trade name UNICOR, FPI markets about 150 types of products and services to federal agencies, including furniture, textiles, electronic components, and engine repair. By mandate, FPI is limited to offering its goods and services to the federal government, with certain exceptions for approved state projects under the Prison Industries Enhancement (PIE) program. In return for this limitation, Congress has required that federal agencies purchase a portion of the products they need from FPI, even if the products cost more than they would from a private vendor.

As FPI has grown, opposition by small business and unions has led Congress to consider

legislation to significantly cut back FPI's ability to employ prison labor. In particular, the Federal Prison Industries Competition in Contracting Act of 2001 (H.R.1577) sponsored by Rep. Peter Hoekstra (R-Mich.) would allow federal agencies to purchase the products they now buy from FPI from private contractors if the price is lower. This bill, co-sponsored by Reps. James Sensenbrenner (R-Wis.) and Barney Frank (D-Mass.), was reported out of committee and is expected to go to the House floor soon. Both supporters and opponents of FPI agree that this would eliminate about half the current sales of FPI. Acknowledging the importance of work and training for prisoners, the bill authorizes funding for vocational training and allows FPI to sell to nonprofits at an operational loss, with the difference being made up through an appropriation from Congress (paid for by taxpayers). Motivated as it is by FPI opponents, this bill would reduce prison labor through FPI without providing an adequate alternative. Before discussing what Congress should do to reform prison labor in the United States, it is first worth considering the benefits of it.

The Benefits of Prison Labor

Prison labor has two main benefits. First, it reduces inmate recidivism, thereby reducing crime and lowering prison costs. Second, if done right, it produces "profits" which can be used to offset the taxpayer-financed costs of incarcerating prisoners.

Studies have shown that inmates who work in prison industries or had vocational training have better outcomes when they are released from prison. Research suggests that the failure of ex-offenders to maintain employment may contribute to high recidivism rates. In 1991, the Federal Bureau of Prisons released an analysis of the Post Release Employment Project. More than 7,000 program participants were evaluated over a two-year period. The study found that those offenders who received training and work experience while in prison had fewer conduct problems and were less likely to be arrested the first year after release.¹ In 1993, the New York State Department of

Correctional Services conducted a study of release outcomes for offenders employed in the production of eyeglasses, which found that the vocational program was effective in lowering rates of probation failure and rearrest for program participants. At 12 months after release, 3 percent of program participants had been returned to department custody compared to 11 percent of the control group; and at 84 months after release, 34 percent of program participants had been returned to department custody compared to 54 percent of the control group.² An FPI study found that upon release from prison, workers were 24 percent more likely to obtain a full-time or day-labor jobs during this time. Moreover, by the end of the first year of release, 10.1 percent of the comparison group inmates had been rearrested or had their conditional release revoked, compared with 6.6 percent of program participants. Further, 72 percent of program participants found and maintained employment during this period, compared with just 63 percent of comparison group inmates. The study concludes:

It appears that prison employment in an industrial work setting and vocational or apprenticeship training can have both short and long term effects that reduce the likelihood of recidivism, particularly for men... Therefore, correctional industries' work and training programs could help to reduce prison populations.³

These studies are not surprising since statistics show that offenders are more likely to be unemployed at time of arrest. One study by the National Institute of Corrections found that up to 40 percent of all offenders were unemployed or marginally employed prior to arrest.⁴ A New York State Department of Labor study found that 83 percent of probation and parole violators were unemployed at the time of violation.⁵ Lower rates of recidivism are not just good for society by reducing crime, but also help keep prison populations smaller than they would otherwise be, saving taxpayers money.

Prison labor can also help offset the costs of housing prisoners, reducing taxpayer-fi-

nanced costs while increasing GDP. When viewed from a growth economics perspective where the goal is to maximize national productivity and the output of goods and services, prison labor is a very good thing for the economy.⁶ The key to understanding this is to recognize that as new workers begin producing output, existing workers are not displaced permanently. They get jobs again and produce goods and services. In this case, the economy is better off because both civilian and prison workers are producing output. Supply creates its own demand. As these prison workers create output, a portion of the money returns to them and they consume items while in prison. But most of the money goes to reducing the costs of housing convicts, which in turn either allows taxes to be reduced or is used by the government to increase spending on other needed services. Either case raises demand for goods and services. In the case of tax cuts, consumers spend the money on goods and services. In the case of government expenditures, the government spends it on government services. Even if the companies pay less than minimum wage (which PPI opposes), the economy still benefits since the products sold will be cheaper, allowing consumers to spend their savings on other goods and services. In all these cases, when prisoners work, the economy is richer because more people are working. It is pretty simple. In the moderate term, employing prisoners doesn't raise unemployment but adds to the overall GDP.

Although some opponents might be willing to grant that in the moderate term employing prisoners is good for the economy, they might argue that the economy can't absorb new prisoners and that it will boost unemployment rates. Considering that seven million welfare recipients moved from welfare to work between 1996 and 2000 as the unemployment rate went down, it is clear that the economy can easily add several hundred thousand prisoners to the labor force over the next five years without increasing unemployment rates. In fact, as the experience of the late 1990s showed, increases in the labor force have no effect on the unemployment rate because new workers don't just work, they also become consumers.

What's the Source of Opposition to Prison Labor?

In spite of the significant advantages of prison labor to both society and inmates, there are two main factors motivating its opponents: concern that making prisoners work is exploitative and fear that it will displace civilian business and labor. Both concerns stimulated the initial restrictions on prison labor put in place at the beginning of the 20th century and are motivating legislative efforts in Congress and the states to restrict it today.

To this day, the image most people have of prison labor comes from movies like "Cool Hand Luke," where workers are exploited by a sadistic foreman as they cut brush by the side of the road or break big rocks into small rocks. As a result of the vestiges of these images, some people reflexively oppose prison labor because they fear a return of such exploitation. Liberals in particular are prone to see prison labor as benefitting some vast "prison industrial complex" while exploiting an oppressed proletariat who have been unfairly imprisoned. For example, one University of Massachusetts website devoted to prisoner rights wrote:

Convicted kidnapper Dino Navarrete doesn't smile much as he surveys the sewing machines at Soledad prison's sprawling workshop. The short, stocky man with tattoos rippling his muscles forearms earns 45 cents an hour making blue work shirts in a medium security prison near Monterey, California. After deductions, he earns about \$60 an hour for an entire month of nine hour days. 'You know they're making money. Where's the money going to? It ain't going to us.'⁷

A recent article in the liberal journal, *American Prospect*, by University of Oregon professor Gordon Lafer decried the unfairness of prison labor, stating: "Prison workers can be hired, fired, or reassigned at will. Not only do they have no right to organize or strike; they also have no means of filing a grievance or voicing any kind of complaint whatsoever.

They have no right to circulate an employee petition or newsletter, no right to call a meeting, and no access to the press.” He complained that inmates are exploited because they get “no health insurance, no unemployment insurance, no vacation time.” Lafer goes on to state that “prison labor is analogous to slave labor.”⁸ He, like most liberal opponents, seems to miss the fundamental point: These are criminals who are serving time in prison for illegal activity and, as such, are deprived of some of the rights free people enjoy. Prisoners don’t get vacations, that’s why they are in prison.

Moreover, the reality is that prison labor looks like normal labor; workers sewing garments, building furniture, recycling computers, answering phones, etc. The prison work environment is usually safer than the rest of the prison. In many cases, workers volunteer for work, because it is a lot more interesting and financially rewarding than watching TV all day. And, at least in the case of private work in prisons, work sites are subject to OSHA inspections.

Notwithstanding this, many on the left feel that prisoners are often incarcerated unjustly (they either didn’t really commit a crime, or they should not have been imprisoned for it) and as such, are victims of an oppressive state and profit-hungry corporations seeking to exploit their cheap labor. Many argue against prison labor on the grounds that we should do more to help the unemployed get jobs before they go to prison. Former Secretary of Labor Robert Reich states: “In other words, without really intending to do so, the nation is in the process of creating a giant jobs program for people who are likely to be unemployed. The only problem is, in order to be eligible for it, you’ve got to be in prison.”⁹ Reich incorrectly assumes that prison labor is a substitute for civilian labor.

Finally, some on the left fear that if prison labor is expanded somehow there will be a greater incentive on the part of the state to put more people in prison through things like mandatory sentencing laws. In his campaign to end prison labor, Lafer concludes:

Ultimately such stopgap measures [such as requiring prisoners to be paid pre-

vailing wages] will be neither effective nor politically viable as long as correctional facilities continue to operate under the fiscal constraints imposed by mandatory sentencing laws. Building a consensus not only against the extensive employment of prisoners but also against mandatory sentencing laws will be a slow and arduous process, but we must undertake it if we hope to stop the expansion of prison labor before it gets much further. A ‘free market’ economy ought to have no place for a vast army of prisoners undermining the wages of working people.¹⁰

The reality is that there is no causal link between prison labor and higher incarceration. But Lafer and his fellow travelers essentially want fewer people put in prison so there will be less competition for civilian workers.

The second source of opposition stems from the fear that prison labor takes away jobs and business from civilian labor and businesses. Unions, businesses, and trade organizations have launched campaigns in the states and Congress to limit its expansion and even roll it back. They make the case that prison labor, especially as operated by FPI, is essentially unfair because it takes jobs from law abiding Americans and business from entrepreneurs. Opposition from businesses who lose contracts (and their conservative political supporters) is understandable. The fact that they are losing business to a government enterprise that employs prisoners at rock-bottom wages makes it doubly difficult for them to swallow. Likewise, workers who lose their jobs due to competition with prison labor feel particularly aggrieved.

Market displacement, however, doesn’t mean that prison labor is not good for the nation nor that its benefits don’t outweigh the costs. In fact, in many ways this debate is similar to the trade debate. While the evidence is clear that free trade helps grow the economy, it also hurts certain workers and firms in the short run. The same can be true with prison labor if the inmates are producing items that take work away from private companies (although prison labor has the advantage over

trade in that it also results in more Americans working, whereas trade only changes the nature of the work, not the number of people working). The answer is to expand assistance for displaced workers and affected firms, not to stop prison labor.

One reason why opponents see prison labor as a zero-sum game that takes jobs from others is that their model of the economy is one in which there is a fixed amount of demand for goods and services. This fixed demand determines the number of jobs and amount of business. If another business fills the demand, the companies and workers originally fulfilling it will cut back on output and the economy will be no better off. Lafer states: "Prison labor must be opposed on the more durable basis that it threatens free labor."

According to Lafer, making prisoners work real jobs (making car parts, taking airline reservations, sewing shirts, etc.) as opposed to "carrying boulders from one side of the road to another ... takes jobs away from people on the outside" and is "at its heart anti labor." Labor is not alone, as businesses wave the small-business flag to argue that prison labor takes from civilian business to support prison business. If there were a limited and immutable demand for auto parts, airline reservations, and shirts, then substituting prison labor for civilian labor would simply transfer jobs from one group of Americans to another with no net benefit. But, as discussed above, it is not as if resources laid off in the private sector remain dormant in perpetuity. The capital, labor, and entrepreneurial talents will be redeployed and produce wealth and income.

There is no doubt that in some cases prison labor, especially when conducted by prison enterprises like FPI, can result in companies losing contracts and some of their workers losing jobs. For example, in 1998, Glamour Glove, a Long Island, N.Y., maker of gloves, was in jeopardy of losing a portion of its government contracting when FPI decided to invest prison labor in glove manufacturing. Through legislative pressure, Glamour Glove was able to prevent this. In these cases, it is important to provide assistance to the workers and allow companies to make the adjustment, just as we do

with companies negatively impacted by trade. But even if Glamour Glove or other companies were to lose their contracts, it is important to recognize that prison labor isn't simply a zero-sum game—it adds to overall economic output. As a result, when viewed from this growth economics perspective, it is clear that the opposition's prescription to keep these prison workers idle or, even worse, have them break rocks, does nothing to add to the economic output and wealth of our economy. When prisoners work, the economy is better off. The total economic output of society is larger than what it would be if those prisoners were just moving rocks.

The majority of Americans support prison labor because they believe that prisoners should help offset some of the costs of incarceration.¹¹ It costs approximately \$40 billion annually to incarcerate prisoners in local, state, and federal prisons. That works out to approximately \$20,000 a year per prisoner. Surely prisoners can work and contribute something to help pay for this so taxpayers don't have to spend as much. Opponents of prison labor use the fact that some prison laborers are incarcerated for life with no chance of release to argue that the focus on reduced recidivism is a sham. The fact is that requiring a life-inmate to work and contribute a portion of his/her pay to room and board is consistent with the notion of the prisoner's responsibility to give something back to society as payment for his/her crimes.

What Should Be Done?

In order to ensure that prison labor can expand, and to limit unfair competition with the private sector, Congress should take away the federal sourcing requirement of FPI, allowing federal inmates to produce and sell to both the private and public sectors. The principal prison labor reform legislation in Congress, H.R.1577, would eliminate the mandatory source requirement for federal agencies to buy from FPI (and provide taxpayer-funded vocational training and subsidized work for non-profit agencies) but it would not allow federal prisoners to work for private sector employers. There are two ways to do this.

First, FPI could simply be allowed to sell its goods in the private marketplace. However, there are several problems with this. In spite of the fact that FPI employs over 22,500 prisoners and had sales of more than \$583 million in 2001, it made a profit of only \$4 million and actually lost \$12.8 million in 2000. This wouldn't be so bad if FPI was using some of its pre-profit income to pay for the upkeep of prisoners. Instead, while UNICOR itself is self-supporting, no "profits" from it were used to offset the costs of incarcerating the prisoners. In fact, by law, any profits must go back into the operation of UNICOR, not into offsetting federal costs of running prisons. FPI pays \$26 million in staff salaries and an estimated \$40 million to prisoners, but only \$2.9 million toward restitution. In large part this appears to be the result of a conscious FPI strategy to focus specifically on low-wage jobs while keeping productivity low to employ more workers. According to Kathleen Hawk Sawyer, director of the Federal Bureau of Prisons,

Low wages provide FPI the opportunity to operate in a labor intensive manner and to employ more inmates with less output of finished goods. The sales per inmate in FPI is one-third to one-fourth that of the private sector worker... Our country imports tens of billions of dollars of products made in countries where the prevailing wage is either equal to, or lower than, what FPI pays its inmate workers.¹²

Not surprisingly, total FPI wages (not just those the prisoners get to keep) range from 23 cents to \$1.15 per hour. It is striking that even at these low wages FPI needs a mandatory sourcing requirement to sell to the federal marketplace.

There is another problem with FPI operations: It is employing workers largely in old economy sectors that will see employment declines in the next decade. Thirty percent are employed making clothing and textiles, while 26 percent make office furniture. According to the Bureau of Labor Statistics, employment in other sectors is expected to decline over the

next 10 years due to trade and technology. The chances of released inmates getting work in these sectors is low. FPI has been slow to expand into new economy sectors that could include call center operations, electronics assembly, data entry, and others. Moreover, even in these sectors, workers are often contributing very little to the final value of the product. For example, much of their furniture is simply assembled by prisoners, who add very little value.

While there is a clear and compelling case to be made for more prison labor, to help both prisoners and society, it is not clear that FPI itself is working. In many ways this shouldn't come as a surprise. As a federal government agency, it doesn't have specialized knowledge in how to run a commercial business. Moreover, FPI has a built-in incentive to employ as many prisoners as possible, but not necessarily in occupations where inmates are likely to find jobs in the future or at wages that can offset the costs of the federal prison system. In addition, FPI has become so focused on expanding sales, even if the prisoners are doing little of the work and FPI is buying close to finished items, that they have moved away from their core mission: employing prisoners in jobs that give them skills and generate enough earnings to offset some of the costs of housing prisoners. **But rather than seek to limit prison work as the protectionists want, a more effective alternative would be to let private companies hire federal prisoners.** This is already the model in 36 states which let private companies employ state prisoners. However, there are several issues to be addressed before moving forward with this reform at the federal level.

The first is wage levels. Letting companies pay rock-bottom wages makes it difficult for prisoners to pay back some of their debt to society, either through victim restitution or offsetting the cost of their upkeep. Moreover, paying workers low wages provides little incentive for companies to organize production for increased output. On the other extreme, opponents want to require companies to pay the "prevailing wage," defined as the average wage civilian workers in these occupations are paid in their local area. But requiring companies to pay prevailing wages would make it

difficult for companies to profitably employ prison labor. While it is true that the companies would save money by not paying benefits like unemployment insurance taxes and health care, it is also true that the costs of employing prisoners can be higher, given the greater difficulty in establishing an efficient plant set-up, higher risks, and greater transaction costs. Moreover, there is intangible risk that companies will be spurned by the public or boycotted by unions for hiring prison workers. As a result, the best solution, from both a sense of fairness and efficiency, is to require that prison employers pay at least the minimum wage. If prisons can negotiate a higher wage, they should have the ability to do so.

The second major issue concerns the extent to which FPI can compete with the private sector. The Sensenbrenner legislation (H.R. 1577) would require that, before introducing any new products, FPI would have to go through a daunting process of approval that only a former Soviet central planner could love. It would let FPI enter into the production of new products upon approval by their board. This approval must be based on a complicated study that takes into account factors such as the unemployment rate of the particular industry sector which produces what FPI wants to start producing (a figure that is by definition impossible to calculate), the projected change in federal demand for the product, and whether the product is trade sensitive. It precludes FPI from entering into new products if the product is “produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or is an import-sensitive product,” the latter of which is defined as a product where the import to domestic production ratio is greater than 25 percent. In a perverse way, the bill would limit production to those items that the nation is already strong in. In contrast, H.R. 1535, “The Prison Inmate Act of 2001,” introduced by Reps. Frank Wolf (R-Va.) and Bobby Scott (D-Va.), takes the opposite approach. It would create an eight member “Foreign Labor Substitute Panel” that would allow FPI to enter into new products and services only if “the goods, wares, or merchan-

dise proposed to be ... produced ... would otherwise be produced by foreign labor.” In this case, workers would gain skills in industries that don’t produce domestically, so when they get out of prison with these skills they would find it difficult, if not impossible, to find work in a U.S. company. Not only does this not help the inmates when they are released, it does little to help the economy by imparting skills that the economy needs.

At their core, both bills are based on the mistaken notion that prison labor hurts the U.S. economy and is unfair to civilian labor and businesses. And so, while Congress can’t bring itself to completely eliminate the program because of its positive effects on inmates, they hope to erect enough draconian and bureaucratic barriers to limit the political fallout from having prison industries compete. And in order to keep prisoners doing something “productive,” they want taxpayers to foot the bill. A better solution than erecting a host of bureaucratic hoops so that FPI avoids competing with any American business would be to let the market decide how to employ prison labor. Congress should allow private companies, under the supervision of FPI, to come into federal prisons and employ workers.

Finally, it is not clear that if Congress removed obstacles to companies employing prisoners and if prisoners themselves had increased incentives to do so, there would be a significant increase in private sector employment. Given some of the barriers involved, it may be that many companies would choose not to employ prison labor. On the other hand, a recent study of prison labor employers found that companies generally view prison workers as productive and dependable.¹³ The bottom line is that, either way, we should remove barriers to companies employing prison labor.

Policy Recommendations

Prison policy should:

- ▶ **Allow private sector companies to employ prisoners to make virtually whatever product or service they want.** Private companies should be able to go into federal

or state prisons in all states and, with the consent of prison officials, hire prisoners to work for pay as their employees. Companies should be able to negotiate a contract with the prison that covers payments for the space, some of the security costs, and wage levels. At the federal level, FPI should transition out of the business of making and selling goods. Instead they should facilitate the employment of prison labor by private sector companies. In this new role, FPI would provide the security and space for private contractors to set up production facilities inside the prison.

- ▶ **Require companies employing prisoners to pay the minimum wage** with no more than 80 percent of the wage taken out to pay for restitution (e.g., court appointed fines, victim restitution, or child support); payments to prisons to offset taxpayer costs of running the prison system; local, state, and federal taxes; and savings for a fund available to the prisoner upon release (prisoners would get to keep at least 20 percent of the wages). To motivate individual prisons to encourage prison labor, a portion of the wages should go to the particular prison where the inmates are employed (as opposed to the general fund of the Federal Bureau of Prisons or to state prison departments). Minimum wage is important not only to ensure that the prisoners make enough to offset taxpayer costs, but also to make it more likely that they will be employed in industries that produce in the United States so that, when released, they have the potential to get a job in their occupation. Hiring prison labor should not be something that is done to subsidize businesses or to simply plough revenues back into FPI, it should be done to help provide prisoners with gainful employment and acquire skills while offsetting a share of the costs of incarceration.
 - ▶ **Lift federal restrictions on the interstate transportation of goods and services produced in state prisons.** Notwithstanding
- legislation passed in 1979 to allow limited private sector employment of prisoners in state prisons, such programs have grown slowly in part because of federal restrictions. State prisons should be able to produce and sell any goods or services they choose anywhere in the world.
- ▶ **Subject federal and state prison workplaces to OSHA inspections.** In contrast to current practices, federal prison workplaces should be subject to OSHA inspections to ensure that inmates have the same safety as civilian workers.
 - ▶ **Institute an FPI ombudsman program to investigate complaints by workers about unfair working conditions.** While prison administrations can treat prisoners inappropriately whether they are working and therefore subject to the current laws and rules governing prisons or not, it is worth creating such an ombudsman position to investigate allegations of abuse.
 - ▶ **Extend the Trade Adjustment Assistance Act to cover workers displaced by prison labor.** Society as a whole benefits from trade, as it does from prison labor. But in both cases, individual companies and workers can be negatively impacted. As a result, while such displacement is expected to be minimal, it is important that civilian workers (and companies) who can document that they lost their job (or business) due to prison labor should be eligible for TAA benefits.
 - ▶ **Mandate that all federal prisoners who can work do work, provided that work is available.** At the state level, Oregon voters approved a ballot measure in 1994 mandating that all prisoners work 40 hours per week and requiring the state to actively market prison labor to private employers. But not all states do this. Massachusetts

prohibits employment of inmates by private companies. Georgia ruled that it is illegal to replace paid employees with civilian prison labor and use prison labor in private, for-profit facilities. Most citizens, in truth, see the fairness of prison labor and don't want prisoners sitting around their cells all day watching television or pumping iron, while they, in turn, must work.

Conclusion

There is a lot that can and should be done to ensure that workers and businesses benefit in the New Economy. Opposing prison labor is not one of them. In fact, limiting prison labor would lower economic growth, while reducing the effectiveness of prisons to move prisoners to productive and law-abiding lives when they are released.

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Endnotes

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¹⁰ <http://www.prospect.org/print/V10/46/lafer-g.html>.

¹¹ “The First National Public Opinion Research on Prison Inmates Working for Private Companies,” Luntz Research Companies, national survey of 1005 adults, +/- 3.1 percent, April 29–May 1, 1998.

¹² By law UNICOR is required to employ as many inmates as possible; more information found online at: http://commdocs.house.gov/committees/judiciary/hju57231.000/hju57231_0.HTM#93.

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