

SENTENCED TO WORK: FROM RETRIBUTION TO REHABILITATION

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Abstract

Inmate work has been an important feature of prison systems in the United States from the colonial period until today (Fox, 1972), and work has been seen as a method to accomplish several correctional objectives (Hawkins, 1976). Prison labor was initiated for disciplinary reasons and retribution in the seventeenth and eighteenth centuries, extended and expanded for financial profit with the development of the industrial prison in the nineteenth, and maintained for its alleged therapeutic and educational value as a part of rehabilitation in the twentieth and twenty-first centuries (Conley, 2001).

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INTRODUCTION

‘The Department [of Criminal Justice] shall *require* (emphasis added) each inmate . . . to work in an agricultural, industrial, or other work program to the extent that the inmate . . . is physically and mentally capable of working.’ (Tex. Gov’t Code § 497.099).

Work programs are ubiquitous in prisons and jails across the nation. Such programs are popular with policymakers and the public alike. Governors and legislators favor work programs as sound economics because offenders’ work offsets the cost of their incarceration which, in turn, pleases taxpayers. Prison wardens and the public endorse work for inmates as a method of avoiding idleness. The security of the institutions is enhanced by reducing inactivity and keeping the offenders occupied. Rehabilitation is also bolstered by work programs. Just as offenders deal with addictions, anger, and ignorance through treatment programs, they must also develop a work ethic. This positive work ethic is essential to successful offender rehabilitation (Johnson, Bennett, and Flanagan, 1977). ‘A constructive member of a community is, by definition, a working member’ (Hawkins, 1976, p. 115). Successful offender reintegration into society, therefore, requires that he or she must not only possess but illustrate a good work ethic (Hawkins, 1976). Those offenders who are employed have fewer disciplinary infractions in prison, obtain better jobs when released, and recidivate less than do unemployed prisoners (Johnson, Bennett, and Flanagan, 1997).

Forcing criminals to atone for their misdeeds through labor is a practice that dates back many centuries (Gaes, Flanagan, Motiuk, and Stewart, 1999). Religious explanations encompassed every facet of human existence prior to the Age of Enlightenment in the west, and the ‘law-breaker’ was viewed as a sinner fallen from the grace of God. Hard labor was seen as an agent of change for both this life and the hereafter. A sentence to labor enabled offenders to earn back the grace of God and forgiveness for their sins. Slavery and servitude were considered forms of restitution; the offender was required to work in order to restore the balance of society that was disrupted by the person’s misdeeds. Although no longer the dominant motivation, religious beliefs were the bedrock of the institutionalized inmates’ work in prison although other justifications were eventually grafted onto or replaced the original premise (Johnstone, 1992).

CONFLUENCE OF WORK AND IMPRISONMENT

Work in and of itself is viewed by modern societies as valuable because it is a primary source of identity, status, and access to goods. It is even recognized as a right under the United Nations’ Universal Declaration of Human Rights (United Nations, 1948). The work individuals perform focuses their attention and energies, gives their lives structure, meaning, and direction, and situates them in social relations with other individuals. The character and quality of work that individuals have access to and perform, perhaps more than anything else, determine how they are perceived by others and how they perceive themselves (Lippke, 1998). This is no less true of prisoners than those in the outside world although courts have consistently stated that there is no constitutional right to prison employment for either federal

or state prisoners, much less a right to a specific type of work (*Inmates of Occoquan v. Barry*, 1988; *Carter v. Tucker*, 2003; *Shabazz v. Cole*, 1999). Conversely, the majority of courts have held that requiring inmates to work does not violate the Eighth Amendment prohibition against cruel and unusual punishment (even when the sentence does not include either the word, ‘labor,’ or the phrase, ‘hard labor,’) or the Thirteenth Amendment prohibition against involuntary servitude by the federal government (*Fallis v. United States*, 1967), by states (*Lymon v. Aramark Corp.*, 2010), by counties (*Canell v. Multnomah County*, 2001), or by cities (*City of Topeka v. Boutwell*, 1894).

Those who violate society’s rules have been dealt with in many ways. Until fairly recently, punishment was harsh; criminals were exiled, enslaved, tortured, mutilated, or executed. Public humiliation was also a common form of punishment. The use of the stocks, the pillory and the ducking stool are examples of this form of punishment. Public humiliation is still used in some parts of the world today (Flanders, 2007). The use of imprisonment for the purpose of offender treatment is relatively new, dating back no further than the last quarter of the eighteenth century. The use of incarceration is thought to be a more humane form of punishment when compared to the traditional methods. Of course, jails and prisons of various kinds have been in existence for hundreds of years, but it was only 200 years ago that they were used for anything other than places of detention for debtors, for religious or political offenders, for those awaiting trial or other and, often harsher, punishment (Barnes, 1921). Of even more recent vintage is the concept of incarceration as an element of rehabilitation (Hawkins, 1976).

Critical to the philosophy of imprisonment as treatment is the implementation of the ‘work’ element. Work has been an important feature of prison systems in the United States from the colonial period until today (Conley, 2001). American prisoners have always worked and forcing them to work has been a way to accomplish several correctional objectives. Historically, labor was a central part of punishment. It was even a popular belief at one time that prisoners’ labor was legally forfeited as a result of their criminality and that the state could expect to profit from their incarceration (Hawkins, 1976). Historians have documented that prison labor was initiated for disciplinary reasons in the seventeenth and eighteenth centuries, extended and expanded for financial profit with the development of the industrial prison in the nineteenth, and maintained for its alleged therapeutic and educational value in the twentieth and twenty-first centuries (Conley, 2001).

In addition to the other benefits, work in prison is a management tool. It alleviates the tedium and boredom of prison and reduces the amount of idle time that inmates may use counterproductively (Potuto, 1986).

As a group, prisoners lack many essential abilities that produce success in the workplace. Therefore, work programs must impart meaningful employment skills and habits to prisoners. . . Besides acquiring skills and habits that increase chances for future employment, working inmates acquire social and personal competence. Released prisoners must believe that they can be good workers and must have the ability to interact with fellow workers. Work programs help cultivate these abilities (Phelan, 1997, p. 5).

A Federal Bureau of Prisons study shows that employed inmates have fewer disciplinary infractions in prison, get better jobs when released, and stay out of trouble with the law longer than do unemployed prisoners (Saylor and Gaes, 1992). Research has also consistently shown that if parolees can find decent jobs as soon as possible after release, they are less likely to return to crime and to prison (Petersilia, 2003). Other studies have also supported that the prison work experience reduces recidivism (McHutchison, 1995; Saylor and Gaes, 1992; 1997). Investments in prison work can lower expenditures of day-to-day prison operations and decrease the likelihood of having to expend resources to quell disturbances (Roberts, 1996). Moreover, prison work programs enable inmates to produce items of value for the government. Sale of these products, in turn, generates revenue that can be used to offset expenses that would otherwise have to be met through appropriated funds. Above all, they provide offenders with the skills necessary to remain free from crime upon release. With prison populations continually on the rise, any solution with the potential to decrease levels of recidivism is an appealing one.

Something, however, must also be in place within the prison to accommodate the surge of an increasing percentage of inmates with histories of violence. Prison work programs are just such the accommodation; they help ease tensions and avert volatile situations. Prisons without meaningful activities for inmates are dangerous prisons, and dangerous prisons are expensive prisons. The work and education programs that are incorporated into prison have played an essential role in protecting lives, preserving stability, and saving money in America's prisons (Phelan, 1997).

Ultimately, the incorporation of labor into the prison system seems only logical since work is seen as having many therapeutic qualities. Whether it is used as a remedy for idleness, to shift the inmate's world view, or just simply to generate revenue, work within prisons has broad appeal, but at the same time, the programs are seen as controversial if they displace workers in the free world. In order to truly understand the nature of prison work, attention must be devoted to the concept of labor and the philosophy of its application in the criminal justice system.

JUSTIFICATION FOR LABOR

Historically, prisons have been perceived as solitary fortresses kept separate from the regular society. The day-to-day operations that take place behind its vast walls traditionally have been shielded from the public eye. Prisons have been characterized as total institutions unaffected by the events that occur outside its walls. In reality, nothing could be further from the truth. The same social forces that have influenced change throughout history had a substantial impact within the prison walls, particularly concerning elements of punishment. Ideally, punishment is to accomplish multiple objectives, although exactly what constitutes those objectives has fluctuated in relation to outside social forces such as the civil rights movement or economics. Almost from the very beginning of the history of punishment by organized societies, and still prominent today, is the incorporation of labor in the punishment phase, especially for those who are imprisoned. Although the underlying philosophy for its

use has changed, its role in the process has remained stable. Traditionally, the incorporation of labor in incarceration has been based on three primary reasons or rationalizations—religion, administrative, and practicality or some meld thereof. All employ some variation of practicality that labor is a functional component that works to benefit a larger group as opposed to just the benefit of the individual.

Initially, the inclusion of labor as punishment was based in religion. Prior to the Age of Enlightenment, religion and religious explanation encompassed every facet of human existence. Laws were considered to be ordained by God. They were essentially codes of conduct by which to live. The ‘law-breaker’ was a sinner fallen from the grace of God. To restore the community that was affected by the sinner’s actions, leaders sought guidance from the Bible. Punishment was corporal in nature and encompassed a myriad of actions—including dismemberment or death.

After the Age of Enlightenment, religion, while less important overall in the secular realm, still maintained an influential presence in the criminal justice system. While the criminal was no longer primarily viewed as directly disobeying the word of God, he or she was viewed as falling victim to the ‘sins’ of society. The result of this victimization meant fewer contributions on the part of the criminal to society as a whole, and in an era marked by extreme economic growth, any reduction in individual industriousness or contribution was seen as a major threat to progress. Thus, in the eyes of leaders, waste of time was viewed as the first and the deadliest of sins. Loss of time through sociability, idle talk, even more sleep than was necessary for health, was worthy of absolute moral condemnation (Anderson, Logio, and Taylor, 2001). This perception was the basis for the old adage, ‘idle hands are the devil’s tools.’ To remedy such idleness, criminals were sentenced to work in conjunction with solitary confinement to encourage personal reflection and penance.

Labor was seen as an agent of change, or at the very minimum, would occupy the prisoner’s time and prevent idleness. Ultimately, the reward for consistent industriousness would be the Grace of God and the promise of everlasting rest in the Hereafter. This belief was bolstered by Calvinistic Theology that was so dear to the hearts of the Puritans. At the center of Calvinism is the concept and goal of the glory of God, that is, everything that everyone does should somehow add to God’s glory. An additional element of Calvinistic Theology that provided the foundation for the Protestant ethic was the concept of the ‘calling’ or using one’s secular occupation--farmer, merchant, soldier, king, or housewife--to glorify God. This taught people not to despise or belittle their job or role in life but instead to see their labor as a “calling” by God. This belief resulted in what Weber called ‘ascetic Protestantism’ or a life of strict discipline (Johnstone, 1992).

Work was not only the best protection against an evil, immoral life but also the best means for glorifying God, and hard work in one’s calling evidenced discipline and devotion. Calvinism heavily influenced the objectives of punishment. For the offender, work was seen as having several benefits. A sentence to labor enabled offenders to earn back the grace of God and forgiveness for their sins, and in doing so; they were also being equipped with the skills to be a contributing members of society. Although no longer the dominant justification, religious beliefs imprinted their essence in the institutionalization of work in prison.

Over time, religious justifications gave way to emerging social and economic forces. Before there were prisons, reformatories, or penitentiaries in the forms known today, there were workhouses or houses of correction, found primarily in Northern Europe and the Germanic states, that were designed to help the poor; these were separate and apart from the places of detention or prisons such as the Bastille in France and the Tower of London that held political or religious offenders (Jackson, 1927).

In the view of society and those in authority, the majority of those in the workhouses had proven themselves to be parasites who stole and begged from others because they were too lazy or otherwise unwilling to earn an honest wage to support themselves. Imprisonment was meant to correct their wrongful ideas through a regime of forced labor that would inculcate the virtues of industriousness, obedience, and punctuality and also train offenders in a particular occupation in order that they could find work following release (Constantine, 2006).

Thus, work was considered an effective and economical rehabilitation tool. The European Workhouse was never really accepted in the United States. Religiously-inspired reformers sought a more humanitarian approach to imprisonment. They believed that criminals lacked respect for authority and proper work habits and that changing these criminals could be accomplished only through a system of penal discipline emphasizing penance through solitary confinement and labor (Shelden and Brown, 2003). The belief in the positive benefits of work for both individual and society also reflected a more deep-set and widespread belief in the positive value of industriousness. Industriousness was not only the main indicator of health but the means to cure; just as the indolence of beggars and vagrants could be associated with mental illness, so industriousness was a sign of mental well-being (Constantine, 2006).

Penal institutions were no different; however, by providing the offender with his or her basic needs such as food, shelter, and clothing, it was thought that the institution was only reinforcing the offenders' negative perceptions of work. The solution was simple, require them to work. This mandate would instill proper work habits and could possibly prove profitable for the prison. At this time, agricultural work was not only favored because it appeared to offer the best hope of rehabilitating offenders but also because it made financial sense (Constantine, 2006). Farming onsite meant inmates could grow their own food and produce surplus to sell, further lowering the cost of their imprisonment.

With the rise of the city, the once dominant agrarian society gave way to the industrial age. Cities provided tremendous markets for manufactured goods and spurred the need for labor. Punishment of criminals changed to meet the demands created by these social conditions. Poor laws, developed at the end of the sixteenth century, required that the poor, vagrants, and vagabonds be put to work in public or private enterprise (Mumford, 1961).

Institutions adopting this ideology attempted to produce ideal workers for the factory system. As a method of punishment, these protocols were ideally suited for an emerging capitalist society, because they attempted to inculcate habits of hard work, punctuality, and obedience (Shelden and Brown, 2003). It was argued that because criminals gain from their misdeeds, it was both fair and just to demand that they reimburse society for its loss caused by their crimes and thus restore the social balance (Hawkins, 1976). To help meet these goals, the courts levy fines against offenders and require restitution to victims. The revenue from prisoner-produced goods and services could be used to meet these financial responsibilities (Reynolds, 2001). Besides financial practicality, making labor a stipulation of punishment was believed to possess deterrent effects. The argument that “hard labor while wearing stripes” is an efficient means of deterring future crime or of balancing the scales of retribution by imposing work as punishment (Johnson, 1972).

Shortly after the first penitentiaries appeared, prison administrators realized that inmates needed some way to productively occupy their time. The prolonged idleness and minimal contact with other people reputedly caused many prisoners to suffer mental breakdowns. To make the isolation less severe and to help convicts prepare for honest employment after release, officials permitted inmates to work by themselves at various occupations such as shoemaking, weaving, tailoring, and polishing marble in their individual cells (Roberts, 1996).

Unlike the workhouse, the penitentiary initially called for solitary confinement without work. It was believed that this method (known as the Pennsylvania System) would result in a quick reformation or penance. The effects of this isolation instead produced severe physical and psychological trauma. To remedy this situation moral and religious instruction was provided to the prisoner. Work was also scheduled for eight to ten hours a day. The prisoner remained in isolation but worked on piecework or handicrafts in his cell. The Auburn System of solitary confinement was developed in New York. This system housed prisoners in single cells but forced them to work in a large area for group labor while in a condition of enforced silence (Johnston, 2004). This system offered the ability to organize prison labor much like an industrial factory. Prison officials anticipated that they could show that government agencies could be self-supporting and, in some cases, even earn a profit. Officials believed that the prisoners could and would work for the benefit of the state. Utilizing this prison industry model, the inmates would first construct the prison itself and would then work in prison factories to pay for the cost of their incarceration (Conley, 2001).

Several attempts were made to make prison labor profitable, but the programs failed to generate enough revenue to offset costs. Despite this failure, labor within the prison remained standard operating procedure. Prison industry programs had proven that they were capable of generating revenue to reduce the cost of incarceration, but they remained subject to strict scrutiny and regulation that significantly impaired their ability to be cost effective. Above all, labor remained a static element in the prison system because meaningful work programs were the most powerful tool prison administrators had to manage the inmate population (Roberts, 2005). Absence of work led to moral and physical degradation and corrupted institutional order (Johnson, 1972).

Administrators have reported many times that large groups of idle prisoners create a constant hazardous situation. The destructive effect of long periods of idleness in prison is, in turn, one of the major causes of the unrest and tensions underlying costly and destructive outbreaks of violence and destruction (Roberts, 1996). Prison officials have attested that prisoners who work behave better. A federal Post Release Employment Project (PREP) study confirmed that employed prisoners do better both inside and outside of prison than those who do not work (Reynolds, 2001). The common theme present in most administrative justifications is that work is a valuable and effective management tool that is critical for institutional order.

Labor has been and is seen as both a punishment and an obligation imposed on the prisoner. The opportunity to work was advocated in the spirit of charity to help the prisoner avoid the moral and physical degradation of idleness (Johnson, 1972). Whatever the source of their beliefs, the public believes that prisoners should work (Hawkins, 1976). During periods of high unemployment, however, the public resists prisoners taking jobs from law-abiding citizens (Fox, 1983). Work with the prison should be productive but not in competition with free enterprise outside. For this reason, prison industry has come under constant fire throughout history. This criticism has continually forced prison industry programs to review and revise their missions and objectives over the years.

WORK IN PRISONS

The task of tracing the historical roots of penology can be a daunting one at best. Although the concept of imprisonment is considered a relatively modern invention, the use of labor as punishment is not. Forcing criminals to atone for their misdeeds through labor is a practice that dates back many centuries to ‘the dawn of civilization’ when the pharaohs, the Chinese, and the Romans forced their criminals into slavery in iron and salt mines and Athenian convicts labored in mines, on galleys, and in building fortifications (Jackson, 1927, p. 219).

The penal institutions of Europe from this time of antiquity to the eighteenth century were typically foul places devoid of proper care, food, or medical treatment. The jailer, usually a ‘shire reeve,’ ran the jail under the ‘fee system.’ This system required inmates to pay for their own food and services, and those who could not pay were fed scraps until they literally starved to death. The following excerpt provides a description of the typical experience in one of these institutions:

Admission to Southwork prison was eleven shillings and four pence. Having got in, the prisoner had to pay for having him put in irons, for his bed, for his room if he was able to afford a separate room. He had to pay for his food, and when he had paid his debts and was ready to go out, he had to pay for having his irons struck off, and a discharge fee (Wilson, 1934, p.186).

Thus, a sentence to servitude was a more preferred disposition than the possible alternative. Each of the punishments involved labor; however, one (imprisonment) had a higher likelihood of death.

Over time, the potential profitability of convict labor was realized. The seeds of labor were sown in the creation of the workhouses or 'bridewells,' named after England's Bridewell Prison, opened in 1557 as a workhouse. Work was institutionalized for minor offenders in order to, as a Dutch proverb often quoted by noted penologist John Howard stated, 'Make men diligent, and you will make them honest' (Wines, 1919, p. 115).

Convict labor became a very lucrative commodity when European colonies experienced a constant shortage of workers that prompted authorities to transport convicts overseas in an effort to fill the void. In England, an Order in Council of 1617 granted a reprieve and stay of execution to people convicted of robbery and other felonies who were strong enough to be employed overseas (Ignatieff, 1981). Shipments of convicts to the American colonies began in 1618, spurred by legislation that granted land to colonists who imported convicts (Orland, 1975).

Transporting convicts to the colonies became popular; the practice supplied labor, cost little, and was actually profitable for the government because manufacturers, farmers, and plantation owners paid for convicts' services (Sellin, 1976). By custom, the convict, upon his or her arrival, assumed the status of indentured servant rather than convict. The terms of penal indenture, ranging from one to five years, were fixed by the colonial legislatures. At the conclusion of the bondage term, the servant was customarily freed and supplied with tools and, occasionally, with land (Orland, 1975). Besides being profitable for the government, this practice showed rehabilitative potential. By employing convict labor to help establish the foundations of a new society, it also insured the offender would possess a more substantial stake in the community. Overall, the practice was very successful and continued for nearly 150 years. Criminals were removed from Europe while aiding in the development of North America.

The American Revolution ended the transportation of felons to the United States. As a result, the Founding Fathers were forced to develop a system of justice that included methods of punishment. Although the precursors of the modern prisons with separation of prisoners into cells, with labor by the inmates as the rule, and with reformation as a chief aim of the incarceration existed at the papal prison of San Michele in Rome, established approximately 1703, and the Belgian prison at Ghent, established in 1773, imprisonment itself was rarely employed as a method of punishment (Barnes, 1921). Incarceration, in the tradition of the English workhouse, developed in the immediate aftermath of the Revolution. A group of prominent Pennsylvania citizens including Benjamin Franklin, Dr. Benjamin Rush, and William Bradford, came together to update the State's very harsh Criminal Code of 1718 (Shelden and Brown, 2003). The new statutes authorized a penalty of hard labor to be 'publicly and disgracefully imposed' for certain crimes. Prisoners were sentenced to perform hard labor 'in streets of cities and towns, and upon the highways of the open country and other public works' (Statutes at Large of Pennsylvania, 1786). It was believed that humiliation through public degradation would act as a rather convincing deterrent to criminal behavior as well as to provide for 'benefit of the public and the reparation of injuries done to private persons' (Statutes at Large of Pennsylvania, 1786).

The punishment, however, had unintended consequences; convicts began to draw crowds of jeering, but sympathetic, people (Shelden and Brown, 2003). In response, a group led by Benjamin Franklin and Dr. Benjamin Rush organized the Philadelphia Society for Alleviating the Miseries of Public Prisoners. The Society's first action was to petition the Pennsylvania Executive Council to declare that the only desirable method of penal reform was 'solitary confinement at hard labor' (Fox, 1972, p. 141). The Pennsylvania legislature responded, in 1789, by designating the Walnut Street Jail as a place for the reception of serious offenders from all parts of the Commonwealth (Orland, 1975). In addition, the revised Pennsylvania criminal code incorporated the principles established by William Penn in 1682 that forbade torture, the capricious use of mutilation, and physical punishment and instead employed imprisonment at hard labor, moderate flogging, fines, and forfeiture of property (Hay, 1980). All lands and goods belonging to felons were to be used to make restitution to the victims of crimes, with restitution being limited to twice the value of the damages (Lewis, 1967).

Felons who owned no property were required by law to work in the prison workhouse until the victim was compensated. The Pennsylvania criminal codes also placed a strong emphasis on accountability and restitution. Reformers believed the prisoner should be rehabilitated and re-educated and should be allowed to earn his or her freedom while learning a specific trade (Shelden and Brown, 2003). In other words, society was holding the offender accountable for his or her crimes. He or she alone would be responsible for the reformation of his or her character through a regime of hard labor. In order to gain freedom from imprisonment, the person would have to demonstrate a devotion to law-abiding life through hard work that, in turn, would generate revenue to compensate the victims. Being allowed to work was a reward for cooperative offenders. It also aided in breaking the boredom of isolation (Quinn, 2003). In advocating the adoption of labor in penal methods, it was argued that the financial and disciplinary advantages went hand in hand (Hiller, 1915).

The subsequent penal institutes were conceived as places where criminal offenders would be isolated from the bad influences of society and from one another so that, while engaged in productive labor, they could reflect on their past misdeeds, repent, and be reformed (Shelden and Brown, 2003). After reformation occurred, the offender would re-enter the community as a useful and productive citizen. Prominent leaders of the time were in complete agreement that reformation was the key to discouraging criminal behavior.

A division, however, occurred among reformers as to the way in which reformation was to be accomplished. Proponents of the Auburn System that emphasized work in association with other prisoners maintained that inmates first had to be 'broken' and then socialized by means of a rigid discipline of congregate, but silent, labor. They argued that the silent system cost less, efficiently tapped convict labor, and developed individuals who eventually would be able to return to the community with the discipline necessary for the industrial age. The Pennsylvanians responded that New York had sacrificed the principal goal of the penitentiary (reformation) to the accessory goal (cost-effectiveness) and contended that exploiting inmates through large-scale industry failed to promote the work ethic and instead merely embittered the prisoners (Fox, 1972). Eventually, the solitary labor system set up under the

Pennsylvania System was seen as antiquated because it was not as efficient as the contrasting congregate labor utilized in the Auburn System (Fox, 1972).

Prison factories during the nineteenth century produced shoes, barrels, carpets, engines, boilers, harnesses, clothing, and furniture--goods that could not be produced at all under the solitary system or not in quantities sufficient to generate significant revenue (Roberts, 1996). The congregate system became the model for the American penitentiary partially, at least, because workers were in short supply, and the Auburn System fit nicely within the larger structure of capitalism, characterized as it was by the need for cheap labor (Shelden and Brown, 2003; Johnson, 2002).

Much of the history of work by prisoners revolved around the search for suitable ways to occupy inmates' time while also serving the financial interests of forces outside the walls. The term 'prison industry' conjures up images of factory assembly-line production, stoop labor in fields, or chain gangs working on roads; however, inmate work encompasses much more than that. Two programs implemented in one state, California, illustrate the variety of the nature of work behind walls although other states' programs incorporate innovative approaches as well. The Department of Forestry and Fire Protection utilizes inmate crews who respond to all types of emergencies including wildfires, floods, search and rescue, and earthquakes (California Department of Forestry and Fire Protection, 2010; Brooks, 2010). At the other end of the spectrum was the Arts-in-Corrections Program, a victim of the state's recent budget crisis. This program aimed to cut recidivism for creative inmates who produced literary and artistic works. The inmates' work products were marketed within the walls and in the free world. Prisoners also labor for nonprofit organizations and charities to better the communities in which they are incarcerated (Johnson, 2002).

The organizational structures for the prison work force are myriad, but there are six traditional established models: the public account system; the contract system and its variant, the piece-price system; the lease system; the state use system; and the works and ways system (Jackson, 1927) 'The dimensions that distinguish one organizational form from another are (1) the locus of control over the production process (state control or private control) and (2) the market within which prison-made goods can be sold (state market or open market)' (Garvey, 1998, pp. 343-344).

In the public account system that has been operational since the beginning of prisons in this nation, the state is the manufacturer of the goods and sells its products on the open market while remaining responsible for the custody, care and discipline of the inmates (Garvey, 1998). In other words, there is no nexus with private entities in either the production or the sale of the produced goods on the open market. The advantage is that the prison receives all the profits, and there is complete unbroken state control of the inmate, but there are disadvantages is that the goods are often of inferior quality and sold for less-than-market value which negatively impacts the wages of free labor and cuts into the profits of companies producing similar items (Jackson, 1927).

The contract system peaked during 1790-1865 with the invention of machinery and the desire for cheap labor that accompanied the rise of the merchant-capitalists in the United States (Fox, 1972). The state housed, fed, clothed, and guarded the prisoner while the private party

employed him or her; that is, the contractor directed the labor while discipline remained with the prison officials (Jackson, 1927). Generally, this was the most profitable system for the state, but it also maximized competition with free labor and the reformatory aspect of labor was lost to the profit motive. In addition, while the prison officials were nominally in control of the inmates, the officials often were the tools of the contractors and took bribes for the agreements or turned blind eyes to safety and health issues. In a variation—the piece-price system—that was primarily employed during the 1880s and 1890s although it had emerged earlier in Pennsylvania and New Jersey, the entrepreneur furnished the raw material and took the finished product at an agreed-upon rate. The inmate was not directly employed by the contractor, and both the prisoner and the work flow remained under the control of the prison, but there was often friction between the contractors and the prison officials, especially the guards. Revelations about the abuse of inmates, the competition with free labor, and profiteering by dishonest administrators and businesses led to a societal demand for reform (Jackson 1927).

Under the convict-lease system, the state transferred its prisoners to a contractor or lessee for a fixed annual fee and relinquished supervision, control, and care of the inmates to the contractor. From the authorities and taxpayers' view, leasing inmates for labor was rather advantageous. Prisons shifted the costs for the upkeep of the prisoners to the contractor effectively lowering their operating budgets as well as generating income by either earning a percentage of the profits from the sale of prisoner-produced goods or as rent for the inmates themselves. The lease system, however, was extremely exploitive (Jackson, 1927). Convicts were deemed as 'being a slave, in a condition of penal servitude to the State' in the eyes of businesses, government, and the public (*Ruffin v. Commonwealth*, 1871, p. 798). The inmates were viewed as less than human even to the point that their lives were considered of little value in comparison to the profits to be earned. Inmates were forced to work in intolerable conditions, isolated in turpentine camps in the swamps and in lumber camps as well as mines and quarries, and subjected to incredibly brutal living conditions and punishments that including flogging, hanging by the thumbs, and the water cure where water was forced into the prisoner's mouth through the use of a funnel while the prisoner was held on his back (Jackson, 1927). Clearly, these operations were outside the Eighth Amendment's prohibition of cruel and unusual punishment. 'The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards' (*Trop v. Dulles*, 1958, at 100). Either little or no litigation about the treatment of these individuals under the lease convict system was brought forward in most states or in the federal courts. Public outrage and political pressure contributed to the abolition of the convict lease system, but it was only when accompanied by economic pressures that made convict-leasing unprofitable that the practice ended (Mancini, 1996).

While the lease system was less objectionable initially to the labor unions and trade associations because the convicts did work in very dangerous conditions that other workers did not want to do, capitalists and labor were united in their opposition to the other schemes of using inmate labor to produce goods for the competitive market, especially during the depressions of the 1870s and 1890s when efforts to shut down prison work programs intensified. Not wanting to lose the income brought in by various prison work programs nor

willing to oppose the growing union power, many state legislatures turned to a state-use system in which prisoners produced goods and services used only in state institutions and agencies as a compromise. The public works and ways system and the state-use system are variants of the same theme. In the first, prisoners work on public projects such as construction and repair of bridges, roads, and state buildings although the skilled labor is often done by free-world employees (Jackson, 1927). For example, inmates at the federal penitentiary at Leavenworth, Kansas and at New York's Sing Sing State Penitentiary helped construct the very walls of their place of confinement (Roberts, 1996). The state-use plans in the different regions of the nation took very different shapes. In the North, inmates often remained sequestered behind the walls to manufacture goods for sale to the state while in the more agricultural areas, farm colonies dominated. Southern states were the first to purchase substantial tracts for this purpose in the 1880s and 1890s, but substantial prison farms were established in Ohio, Illinois, Iowa and Indiana, to name only a few, during the first part of the twentieth century (Jackson 1927; Garvey, 1998).

In both the state-use plan and the public works and ways systems, the state retains control over the inmates and the production processes, and the financial benefits to the state are clear with both. There are two primary disadvantages; the first is that prisoners are located at the work site and lose access to many treatment programs, and the second is that the general public prefers that prisoners remain in the shadows and dislikes seeing men in chains, or today's modern version, unique garb under heavy guard in the open just as those in Massachusetts found in the late eighteenth century. Again, the question is the proper balance to be maintained with the competition of free labor and capital. Labor organizations never opposed all convict labor but instead insisted that employment of inmates should be for the purpose of reformation of the prisoner, not for the profit of the state or in lieu of free market's opportunities (Jackson, 1927).

By the end of the 1930s and with the collapse of the economy during the Great Depression, idealism was set aside and commitment to prison labor as a tool of reform fell precipitously, Congress had passed laws banning prisoner-made products from interstate commerce (Hawes-Cooper Act, 1929; Ashurst-Summers Act, 1935; Walsh-Healy Act, 1936) although exceptions were made during World War I when President Woodrow Wilson's 1918 executive order allowed contracts for war supplies to be made directly with prisons and provided for the compensation of the inmates and during World War II when President Franklin Roosevelt ordered the government to procure goods for the military effort from state and federal prisoners (Jackson, 1927; Hawkins, 1983).

By 1940, every state had passed some sort of limitation on prison-made items in direct competition with free-market products. Despite its hostility toward items produced within state prisons, the national government followed a different pattern for its own institutions. For instance, Congress authorized the Attorney General in 1918 to establish a factory at the Atlanta prison to manufacture cotton fabrics for tents for the military and for mail sacks for the Post Office (Act of July 10, 1918, ch. 144, § 1, 40 Stat. 896, 896). This was expanded in 1930 to all prisons for all physically fit inmates to work in various public ways and works programs and to produce articles for consumption within prisons and authorizing various government departments to buy available prison goods at current market prices (Act of May

27, 1930, ch. 340 § 2, § 7, 46 Stat. at 391, 392). Four years later, Congress authorized the creation of the Federal Prison Industries (FPI), a corporation with a five-member (now six-member) board composed of representatives from industry, labor, agriculture, retailers and consumers, and designees of the Attorney General and the Secretary of Defense and charged it with two sometimes contradictory goals—employment of inmates and diversification ‘so far as practicable prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops’ (Act of June 23, 1934, ch. 736 § 1, § 3 48 Stat. 1211, 1211). The accompanying Executive Order 6917 issued by President Franklin Roosevelt in December iterated that various government agencies were to buy the goods or services but not for more than the fair market price (Roosevelt, 1934). The salient features of the Federal Prison Industries, Inc., program are the following: 1) that inmates are paid for their work (from \$.23 to \$1.25 per hour in 2009) and must make restitution to their victims up to one-half of their income and that the work must be “meaningful,” 2) that the program must be self-supporting; and 3) that the program is essentially a state-use system (Federal Prison Industries, 2009)

In 1977, FPI adopted the trade name of UNICOR. UNICOR industries are situated within various prisons but operate independently from the prison. Federal agencies, with the exception of the Department of Defense and the Central Intelligence Agency, must procure *products* offered by UNICOR, unless authorized by UNICOR to solicit bids from the private sector and waivers may be granted by UNICOR if its price exceeds the current market price for comparable products, but federal agencies are not required to procure *services* provided by UNICOR but are encouraged to do so (James, 2007; Federal Procurement Policy Act, 1974; 48 CFR 8.604). Throughout its history, FPI has adapted and upgraded its product lines in response to changing customer demands; the canvas feed bags for horses and wicker settees it produced in the 1930s, for example, have been supplanted by automated data processing services, recycling, modular office furniture, and electronic cables for defense systems (Roberts, 1996).

Furthermore, in 1979 Congress lifted restrictions on the interstate sale of products made in state prisons and urged correctional administrators to explore private sector avenues for ways to improve prison industry under the Private Sector/ Prison Industry Enhancement Certification (PIE) program; PIE permits prisons to contract with private firms to either hire offenders to work directly for the company or to buy goods from prison-run operations (Justice System Improvement Act of 1979; Hauck, 2000). It partially negates prior legislation and permits the movement of state prison-made products in interstate commerce if the prison program pays offenders either the prevailing wage in the free market or minimum wage, whichever is higher; contributes to the victim’s compensation or victim’s assistance program; consults with organized labor and local businesses that might be affected by the program as well as insuring that offender labor will not displace workers in the free world; and involves the private sector (Misrahi, 1996). More recently, the U.S. Army in 2005 established guidelines for the employment of civilian inmate populations on military installations (U.S. Army Regulation 210-35).

Though national and state governments attempt to mute criticism through the implementation of the state use system, the allegations continue that such programs that compete with private businesses undercut both labor and private enterprise and the debate rages on between the correct equilibrium of two social goods—the employment and rehabilitation of offenders and the need to protect the jobs of law-abiding citizens, especially in troubled economic times (James, 2007). Support for self-sustaining prisons and employment of prisoners unite both liberals and conservatives in maintaining the programs.

CONCLUSION

Today's renewed interest in prison work stems from the tremendous increases in the prisoner population, the diminished belief that prisons can reform prisoners and an American business community unafraid of competition. Over the years, federal and state laws, often to appease those opposed to competition from prison-made goods or for jobs, have denied convicts opportunities for productive employment. While halting steps have been taken to allow the sale of prison-made goods and to create private sector jobs for prisoners, legal restrictions, aided by bureaucratic inertia and labor union sensitivities, continue to hamper progress (Reynolds, 2001).

In a society emphasizing work as the major status determinant, prison work has important potential for making the correctional institution a means of rehabilitation. Discussions between freeworld manufacturers and prison work program supervisors appear to offer new opportunities for inmate workers. These discussions should lead to a reduction in the discrepancies between prison and outside worker. This will allow the inmate worker to make an easier transition from the prison factory to the outside job. In turn, rehabilitation will be further enhanced (Johnson, 1972).

Above all, work within the walls should seek to facilitate certain basic aspects of imprisonment. First, prisons still engage in training prisoners for release. The men and women behind bars are more than just convicts who overwhelmingly come from disenfranchised communities and have few employable skills (Roberts, 2005).

‘At least 95% off all State prisoners’ (Gideon, 2011, p.1) and 98 percent of federal prisoners will be released to our communities in the future (Federal Prison Industries Inc., 2009). They greatly need basic education, training, and social assistance. If society chooses to turn a blind eye to the plight of the prisoner, then that society has no one to blame but itself when he or she is released and returns to a life of crime. Or, as the late Chief Justice Warren Burger colorfully and bluntly stated, ‘We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short term benefits — winning the battles while losing the war. It is wrong. It is expensive. It is stupid.’ (Petersilia, 2003, p. 93)

In addition to preparing inmates for life outside the walls, work in the prison should alleviate the unremitting and incessant tediousness of ‘doing time.’ It should improve discipline by keeping inmates occupied and by raising their morale. Prisons without meaningful activities for inmates are more dangerous (Roberts, 1996).

For external constituencies, investments in prison work can lower expenditures for day-to-day prison operations and thus free resources that can then be appropriated to other rehabilitation programs (Roberts, 1996). Despite the abuses and controversies that have swirled around various programs, no one has proposed an absolute prohibition of inmate work. It is in the best interest of the inmate and society that the prisoners are not idle and that their work results in rehabilitation for the individuals and in benefits, both direct and indirect, for society as a whole (Garvey, 1998). Inmates 'sentenced to work' accomplish all of these goals.

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