

# Prison Labor: Capitalism Without Markets

Understanding the Economics of Totalitarian Institutions

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# Abstract

Prison labor remains a paradox in many ways. Simultaneously sparsely studied or recorded, and ubiquitous; derided by labor unions and free workers as unfair competition and lauded by businesses as the only way to insource labor at the globalized price point; rehabilitating prisoners through the virtue of work, while punishing them through that same work—prisons are in many ways the ultimate reflection of capitalism with the veneer of smiling faces removed. Prisoners work not to avoid starving or to have a place to sleep, but because it is a requirement of their existence. In the United States, all federal inmates must work, and those who refuse face severe penalties including being charged exorbitant sums to reimburse the government for the pleasure of being incarcerated. Prison labor remains anomalous to labor under traditional market forces, but exists within, and remains largely dominated by, the larger economies and politics that govern its existence. The prison is the final destination for the person-become-commodity that is the poor laborer. Those unable to afford the offramps to a prison sentence end up serving time and, once there, the institution of the prison attempts to keep them as an employee for life.

The unsavory nature of prison labor as an economic force has relegated prison labor to only the most dangerous and unwanted jobs in existence, for wages far below market value, and insulated from any claims to benefits, time-off, or workplace safety protocols. Politically, the prison labor industry in the United States has found its niche in attempting to return outsourced jobs to the domestic market, in effect, moving the colonies of American empire right into its own backyard. Without the economic differential power of sweatshop wages in low-income countries, prison wages become only marginally better than no wages, particularly when factoring in the many deductions that prisons apply for court fees, supervision costs, and even disciplinary functions. While these economic factors play a defining role in determining the realities of prison labor, they exist within a larger philosophy of prison life that is, ultimately, capitalistic. Even where the economics of prison labor bears literal resemblance to market demands, prison labor remains a necessary component of the philosophy of capital's primacy over the labor pool. Insulated from the market, the totalitarian prison becomes the end-stage of capitalism; with contradictions uninhibited by class conflict and protected from the bargaining power of labor, prison work is the harbinger of what "free" work becomes as the capitalist fantasy continues.

# Background and Statement of the Problem

## What is prison labor?

In the case *Vanskike v. Peters*, the Seventh Circuit Court of Appeals examined the issue of whether a prisoner, Vanskike, could sue the Illinois Department of Corrections for payment under the Fair Labor Standards Act (FLSA) for labor he was forced to perform on behalf of the prison where he was held. In coming to its conclusion, the Court felt it necessary to examine the “economic reality” of the relationship between Vanskike and the prison. It found that while, like an employer, the prison did hold hiring and firing power, supervisory control over his schedule and working conditions, and determined his pay, these factors were incidental to the totality of control that prisons have over prisoners. His relation to the prison was primarily as its captive, not as its workforce. While employers of free laborers have obligations to their employees under the FLSA as a consequence of the employment contracts they make and the control these contracts assign employers over employees, the Court determined that Vanskike’s relationship to the prison was entirely different. Vanskike had not contracted with the prison to provide his labor to it. On the contrary, he was compelled to work for the prison in service of meeting their regulatory burden to “equip such persons with marketable skills, promote habits of work and responsibility and contribute to the expense of the employment program and the committed person’s cost of incarceration.”<sup>1</sup> In fact, the Court reasoned, the Thirteenth Amendment enumerated an exclusion for prison labor that implied prison labor was in fact “involuntary servitude, not employment.”<sup>2</sup> The Court continued that, because a prisoner’s standard of living was guaranteed by their prison-employer, their standard of living was not tied to their ability to pay and thus a substandard wage, or no wage at all, could be justifiable. Before concluding however, the Court further considered that prison labor at below minimum wage represented an unfair advantage to prison industries in a market regulated by FLSA standards for wages. The Court concluded that this issue carried to its logical conclusion would require all prisoners to be provided similar wages and labor standards as free labor, but that this issue had been significantly mitigated by legislation which specifically prescribed restrictions on prison labor’s economic role.<sup>3</sup>

But if prison labor is involuntary servitude, as opposed to employment, is it still work? Surely, Mr. Vanskike considered the cleaning, kitchen work, and knit shop work he did to be work, even if it had been involuntary. He expended labor energy and was less able to labor for his leisure or

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<sup>1</sup> Ill.Rev.Stat. ch. 38, p 1003-12-1 (1991)

<sup>2</sup> Daniel Lee Vanskike, Plaintiff-appellant, v. Howard A. Peters, III, 974 F.2d 806 (7<sup>th</sup> Cir. 1992)

<sup>3</sup> In *Vanskike*, the Seventh Circuit points to the Ashurst-Sumners Act, 18 U.S.C. §§ 1761–62 as one such regulation, which penalized the knowing transport of prisoner-made goods, but the Prison Industry Enhancement Certification Program (PIECP) passed by Congress in 1979 exempts certified state and local corrections agencies from the Ashurst-Sumners penalties. The PIECP (authorized under the Justice System Improvement Act of 1979 PL 96–157, § 827) provides that prison industries must consult with labor groups and assess market impact and economic displacement. Today, this provision is met in the federal system by Federal Prison Industry’s single Board position reserved for a labor representative and its market share disclosures.

to exchange his labor with others within the prison. Though the court was prescient to note the prison's control over him was total and that they could have denied him all other opportunities to profit from non-sanctioned (or even all voluntary) efforts, the work that Mr. Vanskike did is without a doubt economically necessary work. The prison could not have functioned properly without janitorial services or kitchen work, and if that work were not performed by prisoners, then the prison would have needed to search for that labor elsewhere. The economic dimension of prison labor exhibits market tendencies but exists within the larger framework of the total institution of the prison-prisoner relationship.

Of course, the Seventh Circuit Court in examining Mr. Vanskike's petition came close to bridging a much more fundamental question. What would have happened if the Court determined that prisoners were required to receive consideration for the work they perform in prisons? If the FLSA were applied to the prison labor pool, then that prison labor would have entered the market on relatively equal footing with free labor. Distinctions of market/non-market are fully encapsulated by questions of where the boundaries between regulated/unregulated, paid/unpaid, legitimate/illegitimate lie. The Court's decision to mark prison labor as outside the market is what ensures that it is non-market work. Yet, the Court itself acknowledged that the labor within prisons is regulated. It acknowledged that this labor is governed by the legislature's decision-making regarding the economic effects of prison labor on the larger economy when prison-made goods enter the market. Further, it admitted that the prison's choice to force Mr. Vanskike to perform prison work was a choice not to employ a free laborer to perform that same work (employment that would have been required to meet FLSA standards).

Prisons claim that prison labor performs a rehabilitative function, providing prisoners with job skills that would otherwise deteriorate in idleness and allowing for a productive diversion from the boredom of the prison environment. While these may all be functions of prison labor, the economic function that prison labor plays within the prison environment is equally fundamental. As the Illinois legislature noted, prison labor exists, in part, to offset the costs of incarceration.<sup>4</sup> Even these other prison functions (such as management, rehabilitation, diversion, etc.) bear an economic component: when the prison instructs a prisoner to work, it takes up their time which otherwise would require programming such as classes, training, or care.

While prisons may be relegated to a regulatory gray area, this graying of the market/non-market boundary may be more common than otherwise presumed. Whether the economics of law act as a market encapsulating all market/non-market distinctions, or the legal framework acts as the final delineator between markets and non-markets may be a matter of perspective. Examining these gray areas of employment law, Professor Noah Zatz considered this "paid non-market work" and its constant push and pull from laborers and employers to classify the work as within or outside "the economy" as central to questions of employment law in this space.<sup>5</sup>

Labor within and on behalf of prisons, such as the janitorial and kitchen work which prisoners perform to contribute to the continued functioning of the prison, represents only a portion of all prison labor. Prisons additionally operate programs where they provide prison labor to certain private industries, often for a fee. These arrangements allow free employers to substitute

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<sup>4</sup> (Vanskike v. Peters, 1992)

<sup>5</sup> Noah D. Zatz, Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships, 61 Vanderbilt Law Review 857 (2008), 862. Available at: [scholarship.law.vanderbilt.edu](http://scholarship.law.vanderbilt.edu).

their own laborers for prison laborers which they lease from the prison.<sup>6</sup> Generally, prisons also provide the supervisory and line management roles in these work assignments, as well as performing any other administrative personnel functions that employers would have to cover for free laborers. Federal Prison Industries (operated under the trade name Unicor) is the government corporation which controls federal prison labor in the United States (each state also runs its own state version as well). Prison Industries offers attractive options for private factories to move within the walls of government prisons. With facilities often created or supported by the prison itself, private companies can take advantage of the same total control that typifies the prison labor environment. Prison Industries boasts on its website about the fact that it is completely “self-sustaining” in that it does not result in budget deficits which burden the taxpayer and sells itself as an attractive program for “reshoring” labor from developing markets back to the United States by recreating sweatshops in the “developed” world.<sup>7</sup> In this accounting, the costs of imprisonment are considered sunk costs, irrelevant to prison industries which rely on them to operate.

The courts have held that prisoners are not employees but perform prison work as a penological condition of their sentence. But just because prison work is punishment, and not a voluntary employment contract with an employer-prison, is work performed within the prison not due consideration? If it is not, why have prisons bothered to provide wages at all, even those far below prevailing rates for similar free labor? When prison legislators argue that prison labor helps offset the cost burden of incarceration and prevents the levying of large debts on prisoners to pay for their own imprisonment, are they simply misapplying market characteristics to non-market work or are they correctly perceiving prison labor’s functions within a larger ecosystem of grayed markets? When Federal Prison Industries boasts the ability to bring jobs and manufacturing back to the United States, provide captive labor pools to potential employers, and to reduce the burden on state agencies to pay for supplies, is this simply a marketing gimmick or is it properly placing prison labor as another tool in the economy of state power competition and an effect of larger global economic forces?

This position of prison labor as both inside and outside of wage labor is analogous to the feminist critique of unpaid and paid domestic labor. Where it is paid, it is paid little and treated with little respect, and especially where it is unpaid, it acts as a drain on the ability of women to take part in other labor, for personal benefit or for exchange. Dalla Costa conceptualized this differential power of social and work determinants as the basis of wage slavery.<sup>8</sup> As housework is devalued, the undervalued work remains a requirement for the functioning world, and the workers who do housework are impoverished by taking part in it.<sup>9</sup> Similarly, prison labor, even when it accomplishes necessary productive goals and produces equal goods or services, is devalued by its position as unpaid (or low-paid) labor. The prison laborers’ work is devalued, and their position in the bargaining relation is artificially depressed. This private expropriation of labor becomes a means not just for extracting resources, but for reducing social relations to the means

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<sup>6</sup> Constitutionally Unprotected: Prison Slavery, Felon Disenfranchisement, and the Criminal Exception to Citizenship Rights, 374.

<sup>7</sup> UNICOR/Federal Prison Industries, Inc. (n.d). *Bringing Jobs Home: Investing in America*. UNICOR Print Plant.

<sup>8</sup> Dalla Costa, M. (1972). Las mujeres y la subversión de la comunidad. *El poder de la mujer y la subversión de la comunidad*, 22–65.

<sup>9</sup> Ehrenreich, B. (2010). *Nickel and dimed: On (not) getting by in America*. Metropolitan Books.

by which they service capital.<sup>10</sup> Prisoners lose access to labor that otherwise would be able to support their social networks in their communities, or themselves, and instead must subordinate their relations to the needs of capital. If their work is not valued by the prison labor economy, then their labor power cannot be transferred to their family or community, and likely the additional strain of their position will act as a net drain on that part of their network that remains outside of prison.

In impoverishing prison laborers, the prison industry enacts a sort of primitive accumulation whereby it robs labor power from people and uses them as a raw resource input into its final goods and services. Instead of this labor power being available to prisoners for personal benefit or exchange, their labor power is expropriated, or “extruded,” such that prison laborers are exploited to a point beneath subsistence.<sup>11</sup> This labor power becomes privatized as solely the property of the state, and is dispensed into the market or removed as needed. These needs change with the tides of the larger economy as well as the goals of the state power. States attempt to control markets as the mechanism by which capital accumulates, and prison labor remains a key component of this market regulation and manipulation.

## What are markets?

A definition of the term “market” remains elusive. While the term is used to mean both a place in which exchanges occur, such as “the marketplace of ideas” or to “bring goods to market,” these terms become more difficult to pin down when we attempt to define what is not the market or what is outside the market. One line of reasoning argues that the market entails all things and nothing exists outside the market. If the market is where we exchange things or ideas, then the only things that are outside the market would be those which are unexchangeable or immutable. But to define the market in this way assumes a sort of inherency which is unacceptable to the question at hand. When we determine what lays outside the market we are constrained by the abilities of privatization and the existing technology. While it may have been at one point inconceivable that bands of airwaves or access to a person’s unused personal vehicle or home could be sold on the market, now that the technology exists to do so, these things regularly enter the market domain. Likewise, we might expect that things which are currently not fully commodified, such as clean air or air pollution, might in time become part of the market domain, if the tendency towards privatization reaches those spaces. Even where states attempt to fully delimit market boundaries, areas of illegitimate exchange exist at the peripheries. Both where regulation has not yet caught pace with trend or technology, and where widespread use remains elusive, gray markets can thrive even over long-term periods involving complex actors and relationships.<sup>12</sup>

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<sup>10</sup> Federici, S. (2004). *Caliban and the Witch*. Autonomedia.

<sup>11</sup> WEISS, R. P. (2001). “REPATRIATING” LOW-WAGE WORK: THE POLITICAL ECONOMY OF PRISON LABOR REPRIVATIZATION IN THE POSTINDUSTRIAL UNITED STATES\*. *Criminology*, 39(2), 253–292. doi:10.1111/j.1745-9125.2001.tb00923.x

<sup>12</sup> Leiber, S., & Rossow, V. (2016). Self-Regulation in a Europeanized “Grey Market”? The Role of Brokering Agencies in the (Informal) Care Market between Germany and Poland. In *Third ISA Forum of Sociology. Session: RC02 Economy and Society session: The Regulation of Cross-Border Labor Mobility*. Vienna, 2.



Karl Polanyi, in response to the early work of Ludwig von Mises and Friedrich Hayek described the relationship of markets to states using the term “embeddedness.”<sup>13</sup> Polanyi understood market liberalism to represent an ideological force on the global stage that worked to disembed markets from states, and allow markets to perform the work of equalizing inefficiencies through competition—what might be colloquially referred to as “unfettered capitalism.” While Polanyi did not disagree that markets were an efficient means of allocating prices to scarce resources, he felt that such a proposition was unlikely to be effective as long as states continued to maintain spheres of influence. Polanyi examined the way in which the institution of an international gold standard for currency exchange significantly advanced the goals of market liberals but also produced profound effects on the daily lives of ordinary people, resulting in a strong backlash which led to growing economic protectionism and empire building amongst the newer world powers, culminating in the rise of fascism and the world wars.

Polanyi argued that disembedding the market from the state was difficult because the costs to the interests of people living within those states was too great for them to bear, and to successfully achieve this end would require a complete annihilation of existing social bonds and a complete commodification of society. Polanyi argued that instead of allowing global liberalizing forces to inflict this change upon them, people of these nations tended to react strongly and even violently to maintain economic stability, even for the cost of inefficient markets. Polanyi’s work remains an important basis for many of the environmental questions regarding property rights, norms, and responsibilities as they affect divisions of nature today and helps provide a framework for conceptualizing prison labor’s position within market systems.

Thus, in defining markets we should be aware of the ways in which social and governmental norms affect the realities of what exists within the market domain and what it is that constitutes markets. When we consider “intellectual property” within the current space of digital rights management technology, we may find that property claims which in the past were difficult to enforce are now an inescapable reality with rights-holders able to control access and reproduction throughout the life of digital products. Further, understanding that these norms are both reflections of and formative on current thinking, we can be aware that changes in these norms can just as well lead to a movement of these same property claims to “outside” the market if they are no longer deemed to be properly property claims.

In exploring the realm of prison labor we confront these same difficulties of what is and is not reality, and wherein cause and effect truly lie. When the state determines that prison laborers are not required to be compensated because their labor is part of the rehabilitative process of prison life, or the punitive functions of criminal justice, or even that the transformative power of work is a means of training and self-improvement, are those exchanges outside the market and therefore irreducible to monetary value? Is it impossible for a person to receive both monetary and non-monetary benefits from their labor? A cursory review of the realities of labor, and particularly labor which is paid below market rates, shows that people commonly work for reasons that are not purely financial, and yet still take financial considerations in making these decisions. When someone chooses to perform work for their spouse or their family, or to provide their labor as part of a religious obligation, or to perform mandatory government service, they can in many ways be said to be receiving non-monetary benefits (even if the benefit is simply avoiding state sanction),

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<sup>13</sup> Polanyi, K., & MacIver, R. M. (1944). *The Great Transformation*. (pp. 60) Boston: Beacon Press.

and further we see that free labor is often coercive, even when it provides some monetary benefit to the laborer.

Is prison labor within the market because it is used to create goods which are then sold on the market and indistinguishable from other goods? When prison labor remains wholly a self-contained affair, with prisoners performing the maintenance, cleaning, and cooking of prisons, is this labor outside the market even though the only alternative for the prison would be to acquire these same services from free laborers, presumably at the prevailing wage? While prisoners are under the complete control of the state, they remain able to, and often do, moderate their level of resistance, the enthusiasm of their work, and their own productivity. Federal Prison Industries claims to be an industrialist's utopia, free from the bargaining power of laborers, but prison work stoppages, strikes, and individual acts of resistance remain the norm in the prison environment.<sup>14</sup>

Examining prison labor as it exists, we see markets today playing an important role in moderating prison labor while also seeing prison labor (moderated by the many levers of government repression required for its existence) itself performing a function that moderates the market. Following Polanyi's work, the market remains thoroughly embedded within the "non-market," and the state's actions in moderating prison labor performs both a role in controlling the power of markets to regulate prices of labor and goods, and remains largely affected by and even controlled by similar tracks of the economics of labor and goods outside of the prison's sphere of influence. Prison labor remains simply another locus of interaction between the market and the state where we see a graying of the openly-regulated market and the unregulated market.

Unlike in pre-industrial markets, wherein exchange occurred mostly as a form of reciprocity, capitalist exchange requires a dehumanizing of the individual. Pre-capitalist markets, while they contained an exchange element, were social interactions as much as financial ones.<sup>15</sup> While these social interactions may have acknowledged differences in status or class between individuals, as well as the relative scarcity and need of goods, the purpose of the exchange was largely to strengthen relationships, even when the purpose of the interaction was intentionally harmful.<sup>16</sup> On the other hand, capitalist exchange treats all actors as objects to be exploited for gains in exchange value. Even in an employment relationship, neither the capitalist nor the worker is humanized by the exchange of wages and labor. While the tendency of capital to accumulate may insulate many capitalists from economic annihilation, the capitalist who finds himself in poverty lacks the status that the nobleman in poverty could never have lost.<sup>17</sup> The forces of creative destruction in capitalist societies treat impoverished former capitalists with the same ruthlessness afforded any other actor. Without the value of bringing goods to market, the former price-setter becomes the price-taker and is forced into the final position of selling their own labor and, in effect, themselves.

As the privatization of commons removed subsistence from the reach of the non-working poor, exchange markets became the sole place for these people to make a living, through the sale of their labor to capitalism. In this new economy, the buying and selling of humans took on a renewed character as they formed a primary resource necessary for the production of exchange

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<sup>14</sup> Flanagan, T. J. (1989). Prison labor and industry. In *The American Prison* (pp. 135–161). Springer, Boston, MA.

<sup>15</sup> Graeber, D. 2011. *Debt. The First 5000 Years*. Brooklyn, NY: Melville House.

<sup>16</sup> Sabourin, E. 2007. *Paysans du Brésil. Entre échange et réciprocité* [Peasants of Brazil. Between Exchange and Reciprocity]. Paris: Éditions Quae

<sup>17</sup> Exner, A. (2014). *Degrowth and Demonetization: On the Limits of a Non-Capitalist Market Economy*. *Capitalism Nature Socialism*, 25(3), 9–27. doi:10.1080/10455752.2014.882963

profits.<sup>18</sup> It is within this form of exchange-driven market, or capitalist market, that the forms of prison labor must be examined in its current light. The prison labor pool remains a raw resource within the prison industry economy, as well as a means to control the supply of labor within the larger free economy (through increased incarceration), and a means to control the flow of available work (and thus wages) to free laborers.

## Parsing out markets and capitalism

### Markets without capitalism and capitalism without markets

Some use the terms market and capitalism interchangeably, or at least without much regard to any distinction between the two terms. Working towards a precise definition of the delineations between markets and capitalism or at least a picture of where these terms are considered to overlap or not is essential to determining the extent of market influence on and by prison labor systems. Both markets and capitalism play interrelated and powerful roles in interactions between people and goods that can have a defining effect on the way that people operate in the world. Within capitalist systems, as people engage with commodities, money, capital, or labor through the process of selling or buying them on the market, the market plays a “mystifying” role in determining their ability to relate to these as symbolic commodities or as real objects of value.<sup>19</sup> In this way people become alienated from the experience of production and find it more difficult to affect the processes that lead to this same alienation—they are transformed into the consumer, one who only purchases commodities but does not sell them (or appears to forget their role as a seller). This experience is felt on an individual basis by all actors in the market, even those who collude to work together as trusts or corporations, when they engage with the larger market.<sup>20</sup> While naturally each person is expected to be an uninformed trader on the market (one who is not properly able to appraise the market value of a particular commodity), financial capitalism defines efficient markets as those which perform the function of correcting discrepancies between actual prices and proper market prices by quickening the pace by which informed traders can profit from uninformed traders.<sup>21, 22</sup>

As far as entities or systems can be said to interfere with the proper pricing of commodities to prices, we would say that they are interfering with the efficiency of markets. In this way, it is possible that capitalism interferes with market efficiency in particular markets. This role can be seen most starkly in the way that capitalism can reify the bounds of sanctioned markets and non-sanctioned markets, thereby artificially increasing the prices of certain marketable commodities and artificially lowering the prices of others.<sup>23</sup> Polanyi defined labor as one such “fictitious commodity” for which markets can only exist when the commodity market is created by capitalism.<sup>24</sup>

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<sup>18</sup> Bürgin, A. 1996. Zur Soziogenese der Politischen Ökonomie. Wirtschaftsgeschichtliche und dogmenhistorische Betrachtungen [On the Sociogenesis of Political Economy. Reflections on Economic History and the History of Dogmas]. Marburg: Metropolis-Verlag.

<sup>19</sup> Oilman, B. (1997). *Market mystification in capitalist and market socialist societies*. *Socialism and Democracy*, 11(2), 4. doi:10.1080/08854309708428197

<sup>20</sup> (Oilman, 1997), 5.

<sup>21</sup> Fama, E.F., 1970. Efficient capital markets: A review of theory and empirical work. *J. Finance* XV (2), 383–417.

<sup>22</sup> Harris, L. (2003). *Trading and exchanges: Market microstructure for practitioners*. OUP USA.

<sup>23</sup> Carson, K. A. (2009). Intellectual property: A libertarian critique. *Center for a Stateless Society*, (2), 9–14.

<sup>24</sup> (Polanyi & MacIver, 1944), 73–80.

In the sense that capitalist production concentrates the aims of economic forces into the production of commodities for sale on the market, as opposed to for personal use, capitalism works to serve the market.<sup>25</sup> Even within this narrow sense, however, capitalism distorts markets to ensure that they are those markets which subsequently work to serve the ends of capital. That is, as long as markets work to enshrine the primacy of capital, those markets will be preserved and bolstered by capitalism, while markets which threaten this primacy are weakened or suppressed. Within the capitalist market, fictitious commodities can be treated as commodities for the purposes of market exchange, even if the production of these commodities no longer reflects any relation of the reality which that commodity represents to personal consumption. Within the total state of the prison system, the capitalist market demands the extraction of the fictitious labor-commodity, even when that commodity bears no relation to the needs of those within prison walls. For the capitalist market to exist and be profitable, it must suppress the diversion of that labor-commodity to other means such as prisoner action or personal exchanges of favors. This labor-commodity is then sold into the “outside” market through its transformation into the real commodities which are produced in prison factories or through the exchange for service contracts with outside agencies and subsequent trade on the open market.

In attempting to describe and delineate capitalism, Fernand Braudel described the control, monopolistic and oligopolistic, of capitalists over capital and the flows of legitimated exchange as the defining characteristic of capitalism, and one that is not just divorced from the need for market systems, but which purposefully suppresses market systems to ensure its primacy.<sup>26</sup> For capitalists, and for capitalism, markets remain a threat to the ideology of capital. Where prices are able to self-regulate through open exchange between like parties, and ownership claims are subject to competing interests, rent-seeking capital has little power. When we examine the world as it is today, we see a world that contains both capitalism and markets, oftentimes both existing in tandem and in opposition, both intertwined and segregated from each other.

### **How do markets affect capitalism or modify it?**

Where markets and capitalism coexist, and particularly in the areas where they interact closely, their interactions cause fundamental changes to the organization of capital and markets. Within capitalist systems dominated by private property ownership, and in which the power of capital performs a rent-seeking function, skewing prices in favor of further capital accumulation, markets work some counter-capitalist effects upon the larger system. When capital defines that which is within it, it also defines that which is outside of it. As capital measures labor or goods that are used in the production of further goods for commerce, these goods are valued within capitalism. Thus, work done by a domestic worker in the home for exchange is productive labor, by the metrics of capital, while the same work done by an uncompensated family member is not. Those things which are not valued remain outside of capitalism, even when they might represent a market, in the sense that they remain governed by exchange decisions. Thus, when people exchange goods within a de-legitimated process, such as the illegal transfers of labor or goods between inmates, that labor or good may remain within the market, subject to exchange pricing,

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<sup>25</sup> Paton, J. (2010). *Labour as a (Fictitious) Commodity: Polanyi and the Capitalist “Market Economy.”* *The Economic and Labour Relations Review*, 21(1), 77–87. doi:10.1177/103530461002100107

<sup>26</sup> Braudel, F. (1992). *Civilization and capitalism, 15<sup>th</sup>-18<sup>th</sup> century, vol. II: The wheels of commerce* (Vol. 2). (pp. 223–230). Univ of California Press.

and yet remain outside of capitalism—both unmeasured and invisible. From the perspective of capital it is valueless and therefore non-existent. Further, things may remain within capitalism but fall outside the market when competing claims to title result in an effective freeze on market potential. The item remains untradeable and unusable, removed from the market in the service of legitimating capital's ownership scheme.

Insofar as market forces enable the flow of goods to achieve pricing equilibriums, they work as a limiting factor on the influence of capitalism. Where market access remains a prevailing factor in the flow of goods and services, capitalism is less able to leverage inequalities in financing or knowledge to distort market values. Further, the flow of goods and services towards market equilibrium exerts a cost on the manipulation of markets that asserts power over this flow away from capitalism. While liberal theorists have held this democratizing effect of the market to be superior to any distortionary effect of capitalism on prices over broad spans of time in the overall economy, others have acknowledged how maintaining the regulatory effect of markets requires, in many cases, access to commons or other non-capitalistic functions such as sharing and informal exchanges, which capitalist norms actively devalue.<sup>27</sup>

### Markets without capitalism

Markets operating without capitalism provide a medium for the exchange of goods and services without including the ownership schemes and socialization of losses that typifies a capital-serving economy. In its most basic sense, these markets exist in the pockets of freedom where capitalism has not yet found ways to intrude. Among the unbanked, in areas where police and government enforcers are absent or rare, and within intimate social settings such as family groupings or cohabitants, various forms of exchange thrive without the encroachment of capital interests.

Comparing a capitalist market to an anti-capitalist market, we see the ways in which capitalism engenders the subject's own self-policing of capitalist norms as well as the ways in which a person can resist these same forces.<sup>28, 29</sup> For market anarchists, markets without capitalism provide opportunities for class conflict to operate through the market to achieve egalitarian ends. Some market anarchists and left libertarians hold that the state's existence, and its work with and on behalf of capitalist interests, provides the overall result of empowering capital at the expense of the proletariat. As a whole, the government's net actions towards the proletariat are negative, and it works to use the proletariat's labor power to indirectly enrich capital through the off-loading of infrastructure, social, and environmental costs onto the public.<sup>30</sup>

In non-capitalist markets, where ownership is not enforced through the state's monopoly on violence, but rather one's personal force and the societal forces of communal acceptance to those claims, ownership follows more closely to possession rather than title.<sup>31</sup> While non-capitalist market actors perform controlling functions through their social interaction and self-policing,

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<sup>27</sup> Arvidsson, A. (2020). Capitalism and the Commons. *Theory, Culture & Society*, 37(2), 3–30.

<sup>28</sup> Burchell, G., Davidson, A., & Foucault, M. (2008). *The birth of biopolitics: Lectures at the Collège de France, 1978–1979*. New York, NY: Springer.

<sup>29</sup> Danaher, G., Schirato, T., & Webb, J. (2000). *Understanding Foucault*. (pp. 128). Sage.

<sup>30</sup> Long, R. T. (2012). Left-libertarianism, market anarchism, class conflict and historical theories of distributive justice. *Griffith Law Review*, 21(2), 413–431, 423.

<sup>31</sup> Benkler, Y. (2013). Practical anarchism: Peer mutualism, market power, and the fallible state. *Politics & Society*, 41(2), 213–251, 217.

which has the potential to re-formulate pseudo-capitalist relations, these pockets of state failure in policing provide significant opportunities for market systems to grow unencumbered by capital.<sup>32</sup>

In describing the aspirational market, the one that does not currently exist, but which market anarchists attempt to create, some have used the term “freed” markets to mean those markets which allow for exchange but do not necessarily support capitalist relations (which they argue will fall apart without that missing state support).<sup>33</sup> From a normative standpoint, these theorists argue that markets which provide competitive spaces for labor and underprivileged groups are encumbered by state forces, while moneyed interests enjoy protected monopolies, and that markets ought to be “freed” from these burdens. In the absence of the monopolistic power enforced by the state, such as through property paradigms, rent-rewarding, and socialized costs to capital, these theorists argue that capital will be weakened by this competition and a more democratic economy will result. Thus, Charles Johnson has described this freed market as “the space of maximal consensually sustained social experimentation.”<sup>34</sup> Though the prison environment is quite removed from these spaces of consensual experimentation, even within the confines of the totalitarian prison, pockets of freedom still allow prisoners to experiment with each other in spontaneous and creative ways.

### **Capitalism without markets**

If market anarchists are in favor of a system of markets without capitalism, the opposite of their desired system may be termed “capitalism without markets.” As it is used here this term may mean systems wherein capital maintains a dominant position and controls the flow of value, but where competitive forces that might check the power of capital have been wholly removed through monopolies on force. We might describe this scenario as similar to totalitarian states where private interests still maintain control of both the government and the flow of value, but wherein many aspects such as labor, property disputes, etc. are concentrated in central seats of power. Even in these totalitarian systems, in the real world, we tend to see pockets of market forces arising, not just in markets for goods and labor, but in markets for subversive ideas, social relations, and resistance organizing as well.

Prisons resemble this type of totalitarian capitalism without markets and, similar to totalitarian states, even in prisons some subversive markets do exist with prisoners illicitly trading labor, social debts, ideas, and knowledge between themselves. The diversity of resistance is a testament to the lengths to which these totalitarian regimes will go to maintain control. From the perspective of capital as a control mechanism, and capitalism as a system through which all things are placed in the service of capital, capital and capitalism are self-reinforcing. Capitalism provides the means of using capital control to further empower capital, transforming ownership of past wealth into increased future wealth. Then, capital is further used to beat down anti-capitalist forces and strengthen the control mechanism as a function of the capitalist system. For capitalism as a system, the market may be seen as a hindrance, allowing free agents to transact in ways

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<sup>32</sup> (Benkler, 2013), 241–247.

<sup>33</sup> Johnson, C. W. (2013). Markets Freed from Capitalism. In G. Chartier, *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty* (pp. 59–81). (pp. 60–64). New York, New York: Autonomedia.

<sup>34</sup> (Johnson, 2013), 62.

that act counter to capitalist interests. Within this view of capitalism, we can envision certain forms of capitalism arising which have succeeded in removing market power from the system.

This work presents the prison profit center as a place in which the market has been sharply removed or controlled by capitalist forces, to create a pocket in which capitalism can be said to exist without markets. For prisoners within the prison labor regime, there is no ability to refuse work, to choose between more than one employer, or to prioritize the spending of earnings as one sees fit. Within prisoners' ability to spend the portions of their earnings not garnished for court fees, victim restitution, or prison fees, prisoners are severely constrained in that there remains only a smattering of sanctioned vendors. The captive is both the prison workforce and also the prison's captive market.<sup>35</sup> The prisoner's family becomes a source of wealth extraction for the prison and its various contracted services. The prisoner's free time becomes a resource to be mined and sold to their own families by the minute or second.<sup>36</sup>

In this sense, the prison can be seen as a source by which capitalism engages in primary accumulation, looking to social interactions, leisure time, and other behaviors which are normally not sources of exchange, as a means of profit. The prison forces families apart, increases the costs of providing labor value to members outside the prison, and increases the costs of receiving goods from outside the prison. Then, it uses this increased cost as a means to extract wealth from prisoners and their families. The prison creates the dilemma and then forces its prisoners to pay to have those dilemmas resolved. By impoverishing these people, the prison accumulates primary wealth and degrades the lives of prisoners.

Even as prisons act as totalitarian institutions insulated from market forces, they still operate within a state that responds to market forces, and are affected by policy which is often a reaction to the same market forces. As economic downturns lend themselves to increased incarceration as a means of hiding surplus labor forces and ameliorating middle class fears about potential loss in class privilege, prisons end up swelling with the bodies of the underclass. When prisons rack up high costs and are unable to provide rehabilitation or even space for prisoners, policy forces end up working to reduce prison populations as a means of protecting the overall prison system even through decarceration.<sup>37</sup> This survival mechanism to contain the costs of the totalitarian pockets of prison regimes acts as a market force preventing the unbridled growth of these institutions. These forces may point to the ways in which prisons are not wholly outside market forces, and how totalitarian institutions may be affected by market forces, including those forces within the spaces of social experimentation that work against prisons and prison labor regimes.

## **To what extent is capitalism influential on the economics of prison labor?**

From the very beginning of American experiments with prison labor, economics played a driving role both in the formation of prison labor practices and in the philosophies behind those

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<sup>35</sup> Rahe, S. (2020). The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails. *Hastings Race & Poverty LJ*, 17, 3.

<sup>36</sup> Fulcher, P. A. (2013). The double-edged sword of prison video visitation: Claiming to keep families together while furthering the aims of the prison industrial complex. *Fla. A & M UL Rev.*, 9, 83.

<sup>37</sup> Petersilia, J. (2014). California prison downsizing and its impact on local criminal justice systems. *Harv. L. & Pol'y Rev.*, 8, 327.

who run prisons as profit centers. The Pennsylvania system first subjected inmates to a period of complete isolation, with no comrades, no diversions, and no interaction. After this period, the inmate was slowly introduced to work (within their cell, alone) to which they tended to take immediately as a boon compared to the total idleness of their previous state. This contrasted with the New York system of isolated sleeping quarters with a day of congregate factory work. In the end, the economy of the combined factory system won out as prison wardens vied to prove they each had the most productive prison factory, with little concern for reforming prisoners into enthusiastic workers.<sup>38</sup> While prison labor decisions were driven by economic factors, prisons themselves remained largely focused on maintaining control over prisoners, with labor production itself remaining far from the prime goal. As work introduces codependency into the prison-prisoner relationship, however, the prisoner's bargaining power relative to the prison increases.

While even free employment relationships rarely involve exchanges between parties with equal bargaining power, laborers do maintain a certain level of control over labor purchasers. Likewise, the movement to make prisons profit locations requires a subsequent shift in power in favor of prisoners. As prisoners begin to work, their work becomes a clearly necessary function of the prison's output, both when the labor performed is solely within the prison and when it is used to create goods that will be sold in the open market. Without the prison laborer, the prison factory or prison field does not produce, and in failing to compel prisoners to perform this work, prison administrators are considered failures both in the secondary goal of prison production and in the primary function of maintaining control over prisoners. Even when prisoners receive no wage, the prison-as-profit-center comes to require prisoner work to function, and becomes dependent on the compliant prisoner for its own operation.

The need to maintain the tenuous relationship of control between prisoner and prison administrators, as well as their shifting bargaining powers within the economic reality of an exchange relationship such as prison work, requires prison guards and supervisors to engage with prisoners through informal means of accommodation as a means of moderating their own dependency on prisoner cooperation.<sup>39</sup> This shifting locus of power between the institution and its captive labor-commodity is central to the economics of prison labor and its management. Further, as the wages paid to prison laborers remain largely under the control of the prison industry itself through required remittances, penalties, and prison banking institutions, the prison laborer also represents a form of consumer-commodity, where the prison laborer can be compelled to spend their wages back into the prison industry's pockets. Even in this form, as a captive consumer, the prisoners' position can provide an additional source of power over the prison regime, which requires prisoner cooperation if it is to operate at a reasonable cost.

Within modern capitalism, financial innovation tends towards attempts to privatize the ownership of services and information which either previously existed in the public domain or were provided as a public service by a government entity. This allows for the extraction of profits through increasingly socializing the costs of production and empowering rent-seeking by cleaving otherwise public resources from the public.<sup>40</sup> The financialization of management leads to

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<sup>38</sup> Flanagan, T. J. (1989). Prison labor and industry. In *The American Prison* (pp. 135–161). Springer, Boston, MA.

<sup>39</sup> Hepburn, J. R. (1989). Prison guards as agents of social control. In *The American Prison* (pp. 191–206). Springer, Boston, MA.

<sup>40</sup> Slaughter, S., Slaughter, S. A., & Rhoades, G. (2004). *Academic capitalism and the new economy: Markets, state, and higher education*. JHU Press.



policies which further the relationship of capital to production, with a constant push towards more capital accumulation and increased wealth extraction from the same (often limited) resource pool. Prison labor, as an institution, sequesters the labor-power which would otherwise be available to the prison population for use in their own ventures for self-improvement, family support, or collective action. By privatizing this resource and claiming it as the property of the prison industry (at a cost passed-through to the public by governments), prison labor performs the dual function of weakening its labor class (prisoners) and appropriating that labor-power for private capital. While varying schemes have provided for that private capital to remain within government control, these funds are then funneled back into the continued effort to extract labor-power from later prisoners. By taking on capitalist functions such as profit-production, government entities take on capitalist form. This function of capitalism as extracting power from labor is not simply a byproduct of financial capital, but a necessary prerequisite of maintaining the dominance and primacy of capital.<sup>41</sup> This primacy of capital to dominate markets is the defining characteristic of modern capitalism as a mode of control and production.

In prisons, this movement for capital dominance is further regulated by a desire to maintain control over prison populations and to use prisons as a beacon of the control that capital and government maintain over the larger free laboring population as well. Prison labor production is substantially affected by forces in the free economy and in particular by views regarding prison labor as competition against free laborers' wage demands and an economic advantage in competitive labor markets.<sup>42</sup> As US prison industries have targeted work that had formerly moved to foreign sources of cheaper labor, labor turns from a right not afforded to prisoners (in times of poor economic outlook for free laborers, where the increased labor competition could foreseeably lead to civil unrest) to one of patriotic duty (within the larger function of increasing national productive output). Whether this repatriation of jobs into federal prisons is economically efficient for the global financial system requires further analysis but, as a means of competition between states (particularly ones with large prison populations), prison labor remains important for the economic and political position of states. By ensuring that prisons are not just areas of work, but areas where work is required, states ensure that the base requirements of capitalism are met and that no laborer can escape the grips of capital's dominance. The existence of prison labor tells the free laborer that capitalist production cannot be escaped, and that capitalism will maintain its grip even where compelling a person to work may not have been sustainable in an efficient market. The underclass of prison laborers becomes the foundation upon which all other labor markets are built; the warning to free laborers: Don't fall in!

Within this framework of political means for perpetuating economic production, modern capitalism acts as a force to moderate government for economic ends through political control.<sup>43</sup> In this way, government, partially insulated from market economics through its coercive use of state power, is manipulated as another resource mined by capitalists. Just as prison labor represents a labor power appropriated for prison industries, government becomes another resource to be exploited, one which in turn is used as a tool to further its own exploitation, both of the prisoner class and the free laborer. Thus, prison labor performs both economic functions and noneconomic functions. It can be financially important for states attempting to regain footholds

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<sup>41</sup> Novak, W. J. (2010). Law and the Social Control of American Capitalism. *Emory LJ*, 60, 377.

<sup>42</sup> WEISS, R. P. (2001).

<sup>43</sup> Aglietta, M. (2000). *A theory of capitalist regulation: The US experience* (Vol. 28). Verso.

in certain industries or planning to expand market share in industries deemed too dangerous or unsavory to fit within the regulated system available to free laborers. When environmental, labor, or safety regulations make it economically infeasible for free laborers to perform these functions, prison laborers can act as a labor pool of last resort—always available and maximally expendable.

Prison labor resides at the outskirts of the legal protections afforded to free laborers, and thus can be exploited by governments to ensure that their own regulations do not get in the way of their economic or strategic goals. This positionality of prison labor in relation to free labor, in a sort of edge-city where regulations on capital are loosened and restrictions on people are tightened to ensure the relatively privileged status of the residents who take on non-prison labor, is an important factor in the economics of prison labor. While it may be simple to think of prison laborers as the lowest rung of paid workers with semi-steady employment, their exploitation works both to enrich the free laborers who enjoy the goods and services produced in prisons (or the lowered cost of government services subsidized by prison work), as well as to impoverish free labor as a collective force by providing a contingent labor force so weak as to be virtually unable to refuse work (and, in fact, to be legally compelled to perform it).<sup>44</sup> For the struggling free worker, the concept of tough-on-crime policies removing labor competition in the free labor pool may even seem a welcome helping hand providing respite from an overly competitive labor market.

Because of the relatively low labor cost associated with prison labor, prison industry production is somewhat insulated from labor cost as a production factor.<sup>45</sup> Major economic factors that influence the distribution and goals of prison industries instead tend to involve decisions regarding in which industries prison labor is permitted to take part and the quality and types of labor output that can be reasonably expected to be derived from prison workers. Prisoners face barriers to accessing sensitive documents such as financial information or personal information and prisoners are generally limited in their ability to use the internet or interact with the public, which limits the industries in which prison labor can feasibly be used. Further, prisoners' work is constrained by the security environment of the prison and the varying lengths of their sentences. Labor productivity in prison industries appears to be about one fourth that of free labor industries, a factor attributed to the tendency of prisoners to be less suited than free laborers to their jobs, the lack of incentives for prison laborers to expend more than a minimally acceptable level of effort in their work assignments, the incentives for prison administrators to overstaff prison laborer jobs in the hopes of showing full-employment of prisoners, and the increased costs associated with a work environment heavily impacted by security concerns. Prison work is often subject to unpredictable starts and stops to count all prisoners, search the premises, or accommodate changes in prison guard staffing. Prison industries are reluctant to invest capital into machinery which may be vulnerable to sabotage in a prison strike or work stoppage event, and prisons place heavy limitations on the availability of tools to inmates, particularly those in high-security environments.<sup>46</sup>

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<sup>44</sup> James, N. (2013, January). Federal prison industries: Overview and legislative history. Library of Congress, Congressional Research Service.

<sup>45</sup> Pryor, F. L. (2005). *Industries Behind Bars: An Economic Perspective on the Production of Goods and Services by U.S. Prison Industries*. *Review of Industrial Organization*, 27(1), 1–16. doi:10.1007/s11151-005-4401-3

<sup>46</sup> Deloitte and Touche (1991) Independent Market Study of UNICOR, Federal Prisons Industries, Inc., Report to Congress on Study Findings and Recommendations. Washington, DC.

From the perspective of prisoners, the competing goals of prison industries to both provide prisoners with gainful employment (that can provide them useful, transferable job experience) and to be a robust economic driver that does not compete with free labor, result in some unfortunate consequences.<sup>47</sup> Prison work tends to be focused in industries that are disappearing from the free labor environment (because expanding into those industries does not pose a political burden for prison industries), that are uneconomical under normal regulatory conditions for free labor (such as processing of dangerous or toxic materials), and which are likely labor intensive but capital deprived (because both the labor costs in prison industries and the tendency towards capital expenditures are minimal). Thus, prisoners tend to perform work that is no longer useful for finding employment in the free labor economy and for which the employment prospects are poor or nonexistent.

From the perspective of prison management, prison labor has been conceptualized as a useful means of diverting prisoner attention and energy away from efforts to collectivize or resist control.<sup>48</sup> Within the psychology of imprisonment, the idle prisoner represents a source of constant danger. In fact, in some prisons where official management has turned over control almost entirely to prisoners, prisoners have built up robust internal social governance strategies and engage in meaningful and vibrant work in self-management and productive labor.<sup>49</sup> Prison labor performs the work of social control within certain prison management techniques. This social control aspect performs a further function in turn for the larger “free” economy by revealing to the free worker both the privilege and precarity of their own position. By symbolically showing the free worker that their position is privileged relative to the prison worker, the free worker can be further appeased that their own situation is not so miserable, while simultaneously being pushed to consider the possibility of an alternative working condition that would be comparatively worse and remains ever present.

A model for penal systems as labor institutions presents incarceration as a state adjustment to the unemployment rate. Incarceration allows the state to remove workers which may otherwise be unemployed and shift them into the prison population. Because workers that would be unemployed may be instead hidden within the prison population, there is a causal effect of imprisonment on the unemployment rate, and because incarceration effectively removes the prospect of employment from the incarcerated, even if they would have sought work, there is an “accounting effect” of imprisonment on the unemployment rate.<sup>50</sup> Thus, states may use incarceration as a way to alter or hide unemployment, though one should note that higher incarceration has been linked to long-term increases to unemployment as incarcerated individuals find difficulty in searching for employment after release. Further, because imprisonment tends to be concentrated in those classes most vulnerable to unemployment, the hidden unemployment of people in these classes (namely, the poor, the non-dominant races, or those with lesser job prospects) plays a larger role.<sup>51</sup> States which utilize incarceration in this way can present a rosier picture of equality of

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<sup>47</sup> Silva, C. L. O., & Saraiva, L. A. S. (2016). *Alienation, segregation and resocialization: meanings of prison labor*. *Revista de Administração*, 51(4), 366–376, 8–10. doi:10.1016/j.rausp.2016.07.001

<sup>48</sup> Federal Prison Industries, Inc. (2020). *Fiscal Year 2020 Annual Management Report*. Annual Report, U.S. Department of Justice, Washington, D.C., 2.

<sup>49</sup> Skarbek, D. (2020). *The Puzzle of Prison Order: Why Life Behind Bars Varies Around the World*. Oxford University Press, USA, 21–43.

<sup>50</sup> Western, B., & Beckett, K. (1999). How unregulated is the US labor market? The penal system as a labor market institution. *American Journal of Sociology*, 104(4), 1030–60.

<sup>51</sup> (Western & Beckett, 1999), 1043, 1044.

opportunity while hiding the inequality behind prison gates. Prison labor, within the context of imprisonment as a labor institution, places the prison worker outside of the labor pool (in that they present no danger to increasing the measured unemployment rate in the immediate term), while compelling them to provide productive output. The prison laborer is the perfect worker from a bureaucratic standpoint because they are not a worker at all, but a factor of production, the raw material of the labor-intensive industries which concentrate in the prison industries.

Prison labor acts to preserve the capitalist “system” by both putting a damper on rising wages and expanding the labor pool to include the vast prison populations, and to preserve the capitalist “order” by ensuring that labor remains not an act of liberatory transcendence, but one of subservience to capital.<sup>52</sup> The maintenance of both the capitalist system and the capitalist order provide a service to capitalism that may not be easily measured through traditional economic measures. The effects of this service may instead be more apparent in the overlap between poverty and crime, the tendency of policing to concentrate in areas of poverty regardless of the prevalence of crime, and the ways in which criminal records increase the precarity of the workforce, particularly in low-wage work.

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<sup>52</sup> Schumpeter, J. (1928), “The instability of Capitalism”, *The Economic Journal*, Vol. 38 No. 151, 361–386.

## Research Question

The research question which this paper attempts to address is: How do totalitarian institutions respond to economic forces and reorient themselves to meet capitalist objectives in a dynamic economic environment. How do prisons exert economic force upon prisoners and use economic coercion to control their populations? How do we conceptualize prisons as part of our larger economic systems? This paper will aim to provide a framework for understanding prison labor as part of the capitalist order, and as a necessary component of maintaining the primacy of capital over labor. The study will analyze the ways in which prisons expropriate labor value from their captive workforce and how this theft is necessary for the functioning of a prison system. The study aims to quantify the value of the prison workforce as a means of showing the power that prisoners may be able to wield over prisons when they successfully withhold their labor, and the possible effects on prisons if required to properly remunerate that labor.

# Literature Review

## Political ecologies and philosophies of prison labor

Of the eight metrics used by sociologist Charles Logan to measure prison performance, three bear particular importance to prison labor strategies: order, activity, and management.<sup>1</sup> Varying philosophies of prison labor have attempted to meet these goals through work. While these competing philosophies have fallen in and out of fashion amongst scholars, these philosophies have also contended with political forces from outside prison walls which bear considerable power over the administration of large-scale prison policies and decision-making of upper-bureaucrats.

In many ways the science of prison management is preoccupied with minimizing the deleterious effects of imprisonment on a prisoner's ability to reintegrate into society. While prison administrators tout supposed ties between inmate participation in prison labor programs and lower recidivism, these ties have been called into question.<sup>2</sup> Due to the primacy of security in all matters of prison management, the nature of imprisonment is one in which prisoner needs have little bearing on their actual experience with incarceration. For prison managers, prison labor may be seen as a useful tool for avoiding and mitigating the damaging environment of prison by giving prison workers the opportunity to escape into the dull productivity of the prison factory or shop floor. Correctional officers play the part of production supervisors, and prisoners play the part of workers. To the extent that they receive remuneration for their work, prisoners can feel a sense of relative autonomy with the ability to pay for their own modest indulgences or to send meager amounts to relations on the outside to help maintain the fragile social bonds that imprisonment destroys. While these considerations are subordinate to the practical financial incentives that drive prison industries, the experience of being broken down to the point that this labor can be seen as a respite from the danger or tedium of prison life is an essential role of the prison system in socializing prisoners to the systems of work that are available to them within the capitalist order.<sup>3</sup>

### Prison labor for order

While prison labor manages prisoners within prison, it also manipulates workers outside prison walls to maintain order there. Pat Timms, as Vice President of Operations at Escod, a company that moved some of its manufacturing to prison laborers, noted that by marketing the move as a means to keep jobs from going overseas and ensuring that the production sent to the prison was of the least desirable quality (the most labor intensive, and the most subject to wildly

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<sup>1</sup> Logan, C. H. (1993). *Criminal justice performance measures for prisons*. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

<sup>2</sup> David Weisburd, Cynthia M. Lum, and Anthony Petrosino, "Does Research Design Affect Study Outcomes in Criminal Justice," *The Annals of the American Academy of Political and Social Scientist*, vol. 578 (2001), 50.

<sup>3</sup> Pierson, A., Price, K., & Coleman, S. (2014). Prison Labor. *Politics, Bureaucracy & Justice*, 4(1), 14–17.

shifting consumer demands), Escod was able to convince its free laborers to largely accept the decision.<sup>4</sup> There are similarities between this model of flexible labor pools using prison labor and the flexible prison labor contracting force on which Japan relied in the late nineteenth century.<sup>5</sup>

Prisons use prison labor to maintain order within prison institutions. While prison labor is neither voluntary, nor beneficial for inmates, it may remain a welcome escape from the terrors of prison life deprived of meaningful choices. Within the hierarchy of prison life, the favors of prison guards and management can be doled out through the assignment of sought-after prison work assignments, including those managing other prisoners or which come with increased perks such as access to extra food, facilities, or equipment. For a prisoner who sees the library or prison garden as their only home within an otherwise hellish life, deprivation from these duties may be a significant source of psychological and emotional distress. Further, the competition between inmates for these scarce perks and benefits may cause inter-inmate strife which further results in inmates policing themselves, violently or otherwise, and removing pressure for the prison administration to maintain order.<sup>6</sup> Further, divisions between inmates diverts pressure and inmate energy away from guards and prison administration, reducing the collective ability of inmates to coordinate resistance against prison management. Prison work can be thought of as adding a competitive force between inmates which, when controlled by prison guards and management, can atomize prisoners and pit their interests against one another. In this degraded social state, prisoners may find it difficult to forge collective bonds, and prison management can more easily maintain control over their populations in despair.

### **Prison labor for activity**

Within a prison system packed with prisoners “serving significantly longer sentences, and with virtually no prospects of early release,” prison labor is transformed from an opportunity for prison managers to reduce prison expenditures, to a requirement to ensure that prisoner energies are diverted away from activities that would otherwise threaten control of inmates.<sup>7</sup> A 1955 United Nations report on prison labor found that forced labor was not uncommon amongst prison populations. Most prisoners’ work was a form of punishment, rather than in expectation of economic benefits.<sup>8</sup> Even as prison work expanded to include industrial forms of profitable labor, a primary consideration amongst penal administrators was ensuring the second-class nature of the prison worker to the free laborer.<sup>9</sup>

By directing prisoner energies towards prison work, prisons maintain a monopoly over prisoners’ time and labor power. The labor power that could otherwise be used to strengthen inter-inmate bonds, curry favor, or perform emotional labor to maintain healthy relationships, instead becomes appropriated by the prison for its own productive or reproductive use. The inmate’s time

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<sup>4</sup> WEISS, R.P. (2001), 24.

<sup>5</sup> Johnson, E. H., & Johnson, E. H. (1996). *Japanese corrections: Managing convicted offenders in an orderly society*. SIU Press.

<sup>6</sup> Bair, A. (2007). *Prison labor in the United States: An economic analysis*. (pp. 84). Routledge.

<sup>7</sup> Government Accountability Office. (1993). Testimony Before the Committee on Labor and Human Resources, United States Senate. Prisoner Labor Perspectives on Paying the Federal Minimum Wage. (GAO Publication GAO/T-GGD-94-8). Washington, D.C.: U.S. Government Printing Office, 7.

<sup>8</sup> U.N. Department of Economic and Social Affairs. 1955. Prison Labour. New York: United Nations.

<sup>9</sup> Hawkins, G. (1983). *Prison Labor and Prison Industries*. *Crime and Justice*, 5, 85–127, 100–103. doi:10.1086/449094

becomes colonized and appropriated by the prison, and then used to further enrich the prison system, which is then further empowered to control the weary (and busy) prisoner.

### **Prison labor for management**

From the perspective of managing the costs of prison, particularly where prisons face ballooning prisoner populations, prison labor for the maintenance and continued operation of prisons is a necessity of their function.<sup>10</sup> Simply put, if prisons were not able to use prisoners for labor, prisons could not afford to exist. While prison industries remain the most controversial uses of prison labor, the vast majority of prisoners work performing the daily activities of the prison such as cooking, cleaning, or maintenance which are necessary for the prison to continue to exist. Without the availability of prison labor, these services would need to be purchased on the open market, at a rate that would make prisons incompatible with a budget conscious system of management.

In response to criticism that Federal Prison Industries (FPI) maintains unfair economic advantages through the mandatory sourcing requirement (requiring federal agencies to generally procure from FPI when possible), FPI has undertaken some significant reforms to its policies. The FPI Board of Directors as of March 2003 requires that FPI approve requests for procurement waivers whenever lower costs can be achieved elsewhere, effectively eliminating mandatory sourcing.<sup>11</sup> Even though prison labor remains necessary for the prison system to function, capitalist forces outside prison walls can have significant effects on the prison labor economy. Because FPI production was seen as a potential threat to certain industries, FPI responded by opening itself up to market competition in the federal procurement system. In this way, we can see that FPI policies are subject to the concerns of market forces, at least inasmuch as they are represented by influential capitalists vying for the federal procurement market. In a similar way, there may exist opportunities for a concerted effort to open prison upkeep duties to free labor on fair footing.

Though one might expect states to more readily accede to the demands of capitalists than to the demands of labor, the effort to remove the mandatory sourcing rule provides noted similarities. Mandatory sourcing attempted to lower overall government cost by utilizing available resources (from FPI production) within the federal government. In the same way, prison upkeep labor aims to take available prisoners and use them as a labor pool to meet prison maintenance needs. Both removing mandatory sourcing and opening prison upkeep to free labor can lead available government resources (production labor and machinery or prisoner labor time) to go unused. While simply opening prison upkeep labor to competition from free labor at market rates would be unlikely to create a level playing field (due to the highly internalized costs of a prison labor force and its subsequently low wage), demands by labor to fully account for the costs of prison labor may result in a fairer competition between outside free labor and prison labor for prison upkeep assignments. Further, free labor may take the same stance as the capitalists in removing mandatory sourcing by claiming that remunerated free labor allows for economic stimulus from prisons to accrue outside of prison walls. For prisoners, demands for full cost ac-

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<sup>10</sup> Burton-Rose, Daniel, Dan Pens, and Paul Wright. 1998. *The Ceiling of America*. Monroe, ME: Common Courage Press.

<sup>11</sup> James, N. (2016). *Federal Prison Industries: Background, Debate, Legislative History, and Policy Options* (CRS Report No. RL32380). Retrieved from Congressional Research Service website: [crsreports.congress.gov](http://crsreports.congress.gov)



counting may, however, lead them to be charged for those internalized costs (the costs of their own imprisonment).

Whether this would, overall, create a better or worse situation for prison laborers is beyond the scope of this study but may present an important area for future research. It is possible that a full cost accounting which required prisons to hire free labor if that labor were below the “full cost” of an available prison laborer may be a possible avenue for reform. One would be remiss to overlook that while this may fundamentally alter the prison labor economics in such a way as to drastically reduce the prison’s reliance on prison labor, and even to increase the costs of imprisonment so as to lead to subsequent reductions in prison populations, the fundamental relationship between prisons and their prisoners would not necessarily be altered and the capitalist prison regime would remain intact.

### **Prison labor’s acceptance by the general public**

Early theorists in economics and law argued that private governments arose where business maintained a strong corrupting influence over governmental policy.<sup>12</sup> This fear that regulatory agencies may be captured by the businesses they seek to regulate appears prescient in the late capitalism of today with a more pervasive congruence of business and government interests, working together to further capitalist production. In this mutually beneficial role, government and business act in concert to weaken the working masses and further cement control over them. In times of economic distress, where the economic sacrifices required by the capitalist-state of its poorest people threatens to become too great for them to bear, prison labor, while beneficial in the short-term to those capitalists who might profit from the cheap supply of labor during a time of economic upheaval, represents an existential threat to the persistence of capitalism as a mode of production. Thus, to maintain the capitalist status quo, the state necessarily transforms the philosophy of prison labor from one of productive potential (work as a right utilized to meet management objectives of prison efficiency) to one of a danger to be controlled (work as a privilege to be doled out in order of class, with prisoners last or nearly last).

Further, in times when free labor jobs are plentiful, and unemployment remains out of sight for most workers, prison labor presents little threat and is accepted or even encouraged as a duty of the prisoner in contributing to economic growth. In times of economic contraction, when demand for labor in the free economy is low, and unemployment becomes a social constant, if not an inevitability, workers band together, sometimes violently, to oppose prison labor projects.<sup>13</sup>

As imprisonment remains a means of controlling for surplus population in the labor market (a capitalist correction against rising wages, potential inflation, or increased labor power), and a combination of labor unrest (work stoppages in the general free labor economy) and unemployment or reported misery increase, the tensions of capital become more apparent, and this tension is reflected in the legislative decisions to further increase the criminalization of poverty.<sup>14</sup>

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<sup>12</sup> Robert L. Hale, Coercion and Distribution in a Supposedly Non-Coercive State, 38 POL. SCI. Q. 470 (1923)

<sup>13</sup> Shapiro, K. A. (1998). *A new South rebellion: the battle against convict labor in the Tennessee coalfields, 1871–1896*. (pp. 1–14). Univ of North Carolina Press.

<sup>14</sup> Barlow, D. E., Barlow, M. H., & Johnson, W. W. (1996). *The political economy of criminal justice policy: A time-series analysis of economic conditions, crime, and federal criminal justice legislation, 1948–1987*. *Justice Quarterly*, 13(2), 223–241. doi:10.1080/07418829600092921

While the ebb and flow of prison labor as a labor pool and of prison production as a competing resource depressing commodity prices in the open market represents a visible economic driver to large-scale changes in public perception of prison labor (as a resource to be extracted or as a threat to be constrained as needed), examining changes in administrative decisions regarding which industries attract prison labor production represents a more focused possibility for examining the economic effects on prison labor management decisions. If prison labor managers are informed regarding the industries which they enter and the economic potential of prison labor within the larger economy, and they are empowered and rewarded for making these decisions efficiently, then we would expect to see this decision-making reflected in changes within prison industries' business choices, as well.

## **Prison labor compensation and reproductive work**

Feminist scholars have studied the ways in which domestic work and other “invisible” work’s removal from the definitional notions of work and labor devalues the reproductive work of facility maintenance, domestic work, and emotional care. Reproductive work is largely unpaid, or low-paid work and is afforded a secondary social value compared to “real work” which occurs in the area of capitalist production. There are noted parallels between this degradation of “women’s work” and the devaluation of prison workers who work in the reproductive work of maintaining prison institutions through forced cleaning, cooking, and building maintenance.

These workers, both domestic laborers and prison maintenance workers, perform duties which are repetitive, time-consuming, and physically draining, for little or no pay. Further, the relation of this pay differential in gendered work forms an important component of the economic power differential between men and women. Likewise, the pay differential between prison factory work and prison maintenance work leads to substantial differences in the perks and benefits of each type of work. For inmates with substantial debts from court assessments or victim’s restitution, prison maintenance work may not be a viable option as these deductions are often assessed prior to the prisoner receiving control of their wages, leaving little for personal use or to send to family living on the outside. To those workers attempting to support a family through their prison work, the burden of supporting the state’s extraction of their surplus value may perform a quite similar function to the extraction of value from women performing domestic labor for their families in an unpaid status, or for other families in a low-paid status. This extra burden helps deepen the impoverishment of prisoners by ensuring that their time in prison will see them at a substantially lower pay scale than their free counterparts.<sup>15</sup>

Prison maintenance workers generally earn far lower wages than prisoners in industry assignments, such as factory production, call-center work, or working for private companies.<sup>16</sup> Competition between prisoners for the scarce wages that are available can further degrade their ability to effect resistance against prison labor regimes. Further, prisons utilize the differential between these pay assignments to maintain order amongst prisoners through administrative policies that allow only inmates meeting certain goals (such as zero write-ups) the option to work in prison industry assignments. Thus, the differential between prison maintenance and prison in-

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<sup>15</sup> Grogger, J. (1995). The effect of arrests on the employment and earnings of young men. *The Quarterly Journal of Economics*, 110(1), 51–71.

<sup>16</sup> (Government Accountability Office, 1993), 5.

dustry work becomes another locus of control by which the prison can maintain its dominance of the prison population.

Maintenance and upkeep work is said to be reproductive in that it reproduces the conditions that allow productive labor to occur. This work is the way in which people must reproduce themselves through personal upkeep such as maintaining personal nutrition, exercise, hygiene, and shelter, and in the ways in which people reproduce their own fitness for labor, such as transporting themselves to and from work. Thus, by devaluing reproductive labor, capitalist regimes shift these costs into hidden sources and foist them onto workers. The worker or family that is then unable to internally maintain both their own productive labor (servicing capital) and reproductive labor (servicing themselves so that they can service capital effectively), must contract out that reproductive labor and in doing so recreates the capitalist relation in their appropriation of devalued care work from a domestic worker for their own person or household.<sup>17</sup>

Prison maintenance workers' labor is considered reproductive in that it is necessary to reproduce the conditions that allow for prisons to exist in the first place. Without the cooking, cleaning, and prison maintenance that these workers do, the prison could not meet its most basic goal of housing inmates. Failing to meet that goal, and to maintain a place for prison industry workers to return at the end of the workday to recuperate, the prison factory would be unable to exist. In this way, the reproductive work of the prison maintenance worker is a precondition of the prison industry itself and prisons must maintain this internal labor system before pursuing profitable ventures.

## **Analyzing the production of prison industries and their role in the capitalist economy**

### **How do prison labor managers decide which items to produce?**

With regard to the pricing models used by FPI, even when FPI sold only goods to federal government agencies, its pricing rationale was to not exceed the upper bound of market prices while maintaining its corporate financial well-being.<sup>18</sup> Thus, the push towards economizing prison industry labor can be seen more as an attempt to increase the gross product of the nation and utilize the labor pool of prisoners than to bring in maximum revenue for the state. Despite these pricing decisions, FPI officials reported that they took a more customer-oriented approach to disputes with sourcing agencies and approved waivers when requested and that arbitration was rarely used in practice.<sup>19</sup> Pricing decisions have since moved to the control of senior managers of each product division at FPI who also document how product pricing is set appropriately for the market.<sup>20</sup>

Asatar Bair's economic analysis of prison labor from a Marxian perspective presents the economic value appropriated by prison wardens and doled out both to industry in the form of contracts for prison work, and to employees such as guards (through perks and benefits provided by

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<sup>17</sup> Griffith, D., Preibisch, K., & Contreras, R. (2018). The value of reproductive labor. *American Anthropologist*, 120(2), 232–234.

<sup>18</sup> US General Accounting Office. (1998). *Information on Product Pricing*. Federal Prison Industries. Washington, D.C.: US General Accounting Office., 7.

<sup>19</sup> (US General Accounting Office, 1998), 8.

<sup>20</sup> (US General Accounting Office, 1998), 9.

prison labor such as laundry, entertainment, or other privileges as an extraction of wealth from slave labor).<sup>21</sup> While prison industries tend to ignore or downplay this economic relation to avoid public concern, some industry players have emphasized their relationship to prison labor as a marketing gimmick.<sup>22</sup> From the perspective of inmates working in prison, when choice is an option, working in prison industry generally provides substantially higher wages than working in prison in-house duties such as cleaning, cooking, or plumbing and electrical work.<sup>23</sup> Further, for the warden, prison commodity production and prison maintenance both provide substantial surplus value to the prison system and become a point of pride regarding the prison's use of scientific management principles. This use of productivity monitoring in compulsory labor reflects the role played by American slave labor as a crucible of scientific management practices.<sup>24</sup> Because of the low pay relative to value production involved in the prison labor relation, prisons can reap large internal profits from prison commodity production.<sup>25</sup> While these profits are largely retained within the prison system, they remain a useful locus of power for prison wardens, the arbiters of these internal profits.

When prisons retain prison labor outside the prison factory and instead employ it in prison upkeep duties such as cleaning, cooking, plumbing, and electrical work, they substantially lower the costs of prison overhead and ensure that prisons remain a viable industry as a whole. The work of prisoners both builds prisons and keeps them standing, and the threat of prisoners refusing or stopping work remains a substantial threat to the continuing power of prisons.

### **How are prison labor contracts awarded?**

Research on prison labor in colonial Nigeria shows the ways in which a state relying on prison labor for government and public works projects may be highly susceptible to using incarceration to supply labor pools for government projects.<sup>26</sup> This research shows that during economic shocks, state policy can be a reaction to economic stress, and changes in penal policy (such as a shift from fines to imprisonment) may be the result of labor shortages in the prison industry.<sup>27</sup> Indeed, this tendency of incarceration to follow the need for labor or to tip the scales in favor of weakened capital was also noted by Blackmon in the United States.<sup>28</sup> This inverts the theory put forth by other researchers that crime is a rational response to economic forces, and instead points to crime control as a rational state response to the economic demand for prisoners.<sup>29</sup> Further, when states take on those duties which are considered the special purview of prison laborers, such as large-scale public works projects, or today, widespread firefighting and pandemic equipment production, they may be more willing to incarcerate for lesser crimes and longer sen-

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<sup>21</sup> (Bair, 2007), 68–86.

<sup>22</sup> Prison Blues. (n.d.). *About Us*. Retrieved from Correction Connection Prison Blues Retail Center: [www.prisonblues.net](http://www.prisonblues.net)

<sup>23</sup> (Bair, 2007), 91.

<sup>24</sup> Stapleton, D. (2020). Accounting for Slavery: Masters and Management by Caitlin Rosenthal. *Technology and Culture*, 61(1), 346–347.

<sup>25</sup> (Bair, 2007), 93–94.

<sup>26</sup> Archibong, B., & Obikili, N. (2020). Prison labor: The price of prisons and the lasting effects of incarceration. *African Economic History Working Paper Series*, (52).

<sup>27</sup> (Archibong & Obikili, 2020), 6–8.

<sup>28</sup> Blackmon, D. (2008) *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*. (pp. 64). New York: Anchor Books.

<sup>29</sup> Freeman, Richard B. 1999. "The economics of crime." *Handbook of labor economics* 3: 3529– 3571, 3538–3540.

tences. This relation becomes even more fraught when private institutions become involved in drafting legislation, housing prisoners, and contracting the labor, from start to finish.<sup>30</sup>

Further, the research in Nigeria found evidence that the incarceration rate increased for short-term prisoners in response to positive economic shocks from environmental changes to cash crop yields (a major prison labor industry in colonial Nigeria).<sup>31</sup> In that data, it appears that prison industries may respond to economic pressures for labor demand and that penal systems may attempt to supply this labor through its incarcerated members. Further, the concentration of prison industries in public works projects provided a substantial means of maintaining colonial power.<sup>32</sup> Likewise, in the United States, the state of California pointed to the state's need for labor as a reason for upholding long prison sentences, such as for prisoner-firefighters, even in defiance of higher court rulings.<sup>33</sup> Just as prisoners in the United States remain central to the prison maintenance system and have played a role in building new prison facilities, prison labor in colonial Nigeria subsidized the colonial relation, extracting labor from prisoners to be repurposed into the exploitation of the outside nation through public works projects expanding the colonial project.

While the profitability of prison labor provides states with incentives to increase its use and gain from its property interest in prison labor power, the allure of prison laborers as a preferred alternative to free labor has also led some capitalists to push for increases in prison labor.<sup>34</sup> Further, both the state and private industry are able to use prison labor as a control on prices of free labor, while also using the disciplining effect of prison labor to criminalize and indoctrinate those who seek to make their way of life outside sanctioned wage forms.<sup>35</sup> The United Nations chronicled the ways in which financial turmoil, such as during the 2008–2009 global financial crisis, pushed even large capitalists such as multinational corporations to search for unfree labor, which may come in the form of coerced labor.<sup>36</sup> The government's extension of the prison labor pool to private enterprise is the natural consequence of a state more than willing to use its captives to support capital struggling to maintain past profit levels.

Rather than the neutral actor that liberal theorists presume it to be, the state plays a vital role in delivering the subsidy of forced labor to industry.<sup>37</sup> In fact, the role of the state and capitalism in ensuring the supply of coerced labor can be seen as a substantial threat to the existence of liberty or free exchange in general. As the state and industry conspire to create coerced labor and mold that labor into "productive" forces for sale on the pseudo-market, the overall distortive effect can be destructive to the larger market. By driving down wages, lowering the labor value of goods and services, and coercing labor to come to the market, this force extracts unwilling labor from people for below-market compensation. Some theorists have likened this theft to the Marxist concept of primitive accumulation, whereby the capitalist or state is taking a resource (labor) from the commons and privatizing it as the foundation of capital; but even this analysis may be

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<sup>30</sup> Sullivan, L. (2010). Prison economics help drive Ariz. immigration law. *National Public Radio*, 28, 11–182.

<sup>31</sup> (Archibong & Obikili, 2020), 32–33.

<sup>32</sup> (Archibong & Obikili, 2020), 34–35.

<sup>33</sup> *Coleman v. Brown*, 952 F. Supp. 2d 901 (E.D. Cal. and N.D. Cal. 2013)

<sup>34</sup> LeBaron, G. (2011). *Neoliberalism and the governance of unfree labor: A feminist political economy account* (Doctoral dissertation, University of York), 20.

<sup>35</sup> (LeBaron, 2011), 21–24.

<sup>36</sup> U N (2009) Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences. Human Rights Council, Twelfth Session, United Nations, 39.

<sup>37</sup> (LeBaron, 2011), 51–53.

too generous. While it is true that primitive accumulation also destroys value by taking from the commons more than it can return to the market, this relation with coercive labor additionally degrades the labor power of the lowest class of free laborers (and in doing so, puts them at the highest risk of falling victim to incarceration themselves). Thus, state-supported coerced labor as a form of primitive accumulation has the dual effect of controlling labor that would otherwise fall outside of capitalist control (labor-power that might otherwise reside outside regulated markets) as well as dragging down labor already within capitalist control (by reducing the free wage rate).

Taking the liberal conception of the state as a facilitator of capitalism, benefiting only in tandem with the growth of competitive markets, this action by the state in distorting market forces may be seen as counterintuitive, but from an analysis of the state's purpose as an arbiter of private property used as a medium of exploitation, the state's persistent purpose in providing prison labor is clear. By providing a labor pool for its own growth and for lowering the cost of doing business (by bringing down wages), the state can artificially boost the profit system. By degrading the employment relation through coercive labor contracts, the state cements its property relation to prisoners and weakens the power of organized labor or other non-state forces that might raise the costs of state expansion (such as for public work projects). In its competition with other states to boost gross domestic product relative to the number of free laborers, prison industries provide a dual benefit to the balance sheet of corporate governance. Unfree labor is simply the other side of free capital.

Just like an analysis of the convict-leasing system which characterizes convict-leasing in the post-Civil War South as a reincarnation of slavery misses the role of convict-leasing in shaping the resource extraction of Southern capitalists through cheap labor and subsidizing railroad building, an analysis of the current prison labor regime as simply another form of capitalist wage systems misses the ways in which prison labor opens up markets which might otherwise be unexploited due to their lack of profitability.<sup>38</sup> When FPI markets prison labor as the cure to outsourcing, they are honing in on a key benefit of prison labor—it is extralegal. By carving out a labor market which is free from its own regulations on free labor, the prison labor regime allows the government to move into markets such as e-waste recycling, where safety protocols reduce the profitability of free-labor industry, and garment work and call-centers, where labor costs have led industry to pursue opportunities in cheaper labor markets.<sup>39</sup>

The prison labor system allows governments to escape their own labor laws and build a foundational underclass of prison workers. These workers are then relegated to the industries which are least safe, most labor-intensive, and most precarious. As this work remains in industries which have largely been outlawed, either by statute or by prohibitively high operations costs under legal market conditions, it is unlikely that labor unions or other advocates will be able to gain the widespread appeal necessary to protect prison workers from being forced into these industries.

Where prison labor has been used in strike breaking, or even in normal conditions side-by-side with free labor, it degrades the bargaining power of free laborers to sell their labor for a decent wage.<sup>40</sup> In a prison labor system that increasingly focuses on call centers and adminis-

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<sup>38</sup> (Lebaron, 2011), 159–162.

<sup>39</sup> Jackson, A. S., Shuman, A., & Dayaneni, G. (2006). *Toxic Sweatshops: How UNICOR Prison Recycling Harms Workers, Communities, the Environment and the Recycling Industry*, prepared by Center for Environmental Health, Prison Activist Resource Center. *Silicon Valley Toxics Coalition & Computer TakeBack Campaign*.

<sup>40</sup> (Lebaron, 2011), 172.

trative functions, rather than working on the prison factory line, the distinction between the prison worker and the free laborer may tend towards complete erosion. Working side-by-side with convict labor may not mean entering prison walls to work, but rather entails falling in the same labor queue with prison workers waiting to answer the same call or pick up the same work ticket. In the degraded environment for organized labor that exists today, the ability of labor to resist these changes might be scattered due to its own scramble to protect even the waged-work which was once an expectation and is now rarified by contract and contingent labor. Additionally, the concentration of prison work into industries with little corresponding free labor, such as those industries generally outsourced to cheaper labor markets, ensures a starkly different situation than when organized labor and competitive industry successfully rallied to keep prison labor out of their industries.

## Labor and industry forces and their effects on prison labor

In the United States the history of labor opposition to prison industries is about as old as the US history of prison labor.<sup>41</sup> In New York City, mechanics petitioning the legislature noted the irony of the taxes from their own labor subsidizing the prison industries flooding the labor market with coerced labor.<sup>42</sup> As capitalists sought to transfer the factory into prison walls, organized labor responded to the danger posed by industrialized prison labor to wages by stressing that labor should be rehabilitative and reformatory for prisoners, preparing them for a free working life post-incarceration, while pointing out that industrial prison labor largely reduces the dignity of free workers and prison workers without adequately preparing prisoners for release.<sup>43</sup> Samuel Gompers, as president of the American Federation of Labor said that prison workers ought to work, not for state or private profit, “but for their reformation and for the benefit of their dependents.”<sup>44</sup>

Organized labor held that extracting extra profit (above the profit level supported by a free labor regime) from prison laborers’ work made prison labor an anticompetitive force. As long as those in charge of employing prisoners (and not hiring free laborers for the same work) were subsidized by lower wages, the employment of prison labor would represent a threat to the wages of free laborers. Instead, organized labor argued that prison workers ought to receive normal wages to be remitted to their dependents outside of prisons, so that the value extracted by their employers (prisons or prison contractors) would be comparable to that extracted by employers of free laborers, and to maintain the dignity of work as a means for workers, including prison workers, to take care of themselves and their families.<sup>45, 46</sup>

Likewise, within private industry, industry groups have often lobbied strongly against the use of prison labor in their industries. Industry groups remain an integral part of the FPI Board and

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<sup>41</sup> Jackson, H. T. (1927). Prison labor. *Am. Inst. Crim. L. & Criminology*, 18, 218.

<sup>42</sup> John Rogers Commons, and Associates, *History of Labor in the United States*, New York, Macmillan, 1921, Vol. 1, 347.

<sup>43</sup> (Jackson, 1927), 247.

<sup>44</sup> American Federation of Labor History, *Encyclopedia Reference Book*, American Federation of Labor, Washington, D. C. (pp. 185–188). 1921.

<sup>45</sup> (Jackson, 1927), 250.

<sup>46</sup> Proceedings of the Academy of Political Science in the City of New York, Vol. 4, No. 2, Good Roads and Convict Labor (Jan., 1914), 91.

FPI is required to provide reports regarding its market share in all industries in which it operates, and to work to mitigate the effects of its work being concentrated in certain industries.

As a purchaser of labor, prisons operate in monopsony conditions because they maintain a monopoly over the pool of available labor and provide the sole source of “legitimate” labor to prison laborers.<sup>47</sup> While this employment pool does not include all forms of prison employment, as prisoners may regularly have the opportunity to perform labor in other functions such as in maintaining or improving their personal areas or by performing work for other prisoners, in exchange or out of goodwill, prisons maintain a monopoly on this “legitimate” labor by delegitimizing all other forms of labor, and often explicitly prohibiting them through sanctions on prisoner enterprises or exchange.

Within this context of deprivation from their own labor potential, inmate reports regarding work seem to reflect one of the larger goals of prison labor as a prison management system: compared to the boredom and despair of prison life, labor can be a distractive performance that allows the prisoner to imagine they are on similar footing to free laborers.<sup>48</sup> In comparison to the tedium of the prison warehouse, the fenced factory at least offers the illusion of self-control. Similar to the early Pennsylvania system of deprivation followed by an introduction to work as a diversion, under the threat of punishment, prison debt, or complete lack of stimulation, prison labor can be its own meager reward.

The effects of prison labor on the larger economy are characterized by the concentration of prison labor into a few industries. Because prison labor’s competitive advantage lies in its cheap access to large captive labor pools, it tends to focus on labor-intensive products and in industries which would otherwise not be profitable in the free labor economy. Thus, the industries affected by prison labor tend to be those which are already most precarious in the free labor economy, and which tend to be concentrated in remote, rural factory settings where the industry remains integral to the local economy (even if it produces few free labor jobs). Prison industries have had a disproportionate impact on these vulnerable micro-economies, leading to higher unemployment, lower labor force participation, and lower wages (particularly for women).<sup>49</sup> Further, these same factors lead prison labor to increase the benefits to capital through a growth in patenting in prison labor industries and a larger gap between the lowest rungs of labor (those free workers in competition with prison laborers) and the next highest strata (those free workers currently free from competitive pressure of prison industries in their jobs).<sup>50</sup>

In the United States, before states began enacting laws allowing the use of prison labor, prisons generally remained in large urban centers, where crimes tended to be policed and where those housed in prisons could maintain some semblance of relationship with their own community.<sup>51</sup> Once prisons became a profit center, prisons began to be located in economically depressed areas, often replacing a recently-defunct industry that had dominated the local economy. This change may imply that the opening of prisons to economic forces of the labor market led to the prison real estate boom in rural areas as these rural areas sought the promise of prison guard jobs that

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<sup>47</sup> Ling, R. (2020, May 24). Scarcity and Abundance Under Anarchism. *Center for a Stateless Society*.

<sup>48</sup> Richmond, K. M. (2014). *Why Work While Incarcerated? Inmate Perceptions on Prison Industries Employment*. *Journal of Offender Rehabilitation*, 53(4), 231–252. doi:10.1080/10509674.2014.902005

<sup>49</sup> Poyker, M. (2019). Economic Consequences of the US Convict Labor System. *Institute for New Economic Thinking Working Paper Series*, (91).

<sup>50</sup> (Poyker, 2019), 4–5.

<sup>51</sup> (Poyker, 2019), 3.



prison proponents promised.<sup>52</sup> While these promises rarely became reality, prison real estate has tended to provide gains to the large landholders who lease or sell land to prisons.<sup>53, 54</sup>

As the government response to poverty increasingly turns to incarceration, prison labor simply becomes another means for offsetting the costs and failures of capitalism onto the backs of the most impoverished.<sup>55</sup> Prison labor becomes a means for recouping the costs of imprisonment even while imprisonment remains a solution for a failing economy. Relegating prison labor to the lowest rung amongst labor pools with below-market compensation accomplishes the dual role of admitting that the labor of prisoners is valuable while also admitting that it would not be supported in “free” market conditions (within the lines of state-legitimated production). While states criminalize illegitimate forms of labor and market exchange, they further redraw those lines for their employment relationship to prisoners they house, exploiting them for labor that is then re-legitimized and sold back into the open market as sanctioned goods or services. Further, prison labor remains a powerful tool for capitalists seeking to sidestep labor strikes or issues with contingent labor falling below subsistence wages for free laborers, replacing the most precarious of free laborers.<sup>56</sup> The value of prison labor as an economic resource within the capitalist economy is not just as a cheap and disposable labor force. Prison labor plays a functional role within the larger “free” economy that depresses wages while enforcing the property relations of capitalists to labor that is instrumental to maintaining the capitalist order.

## The future of prison labor: where is it going from here?

While criminal justice researchers have discussed incarceration rates as a reflection of overall social repression, in the “liberal democratic” states where maintaining a veneer of social liberation is necessary for maintaining control over the polity, “repressive criminal justice policies are often cloaked in liberative ideology.”<sup>57</sup> As the costs of rapid fluctuations in the economy continue to be borne by the most precarious proletariat, the paranoia of capital will likely continue to demand this repression through aggressive policing of the impoverished. Physically housing prisoners appears to be falling out of vogue as the so-called “community” alternatives of embedding incarcerated individuals in the public through electronic surveillance and assessment of a financial second-class citizenship appear to entail massive cost-savings in comparison.

Further, by allowing prisoners to remain outside prison, the carceral state becomes deterritorialized in a way that further embeds the prison within the communities it polices. Even as these prisoners are able to maintain their old relationships and family ties by remaining in the physical spaces of their communities, the assessment of financial penalties (both payment for the costs of their own electronic surveillance and the continued costs of living in the “free” world

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<sup>52</sup> Gilmore, R. W. 2007. *Golden gulag: Prisons, surplus, crisis and opposition in globalizing California*. Berkeley: University of California Press.

<sup>53</sup> (Gilmore, 2007), 130–142.

<sup>54</sup> Kling, J. R., & Krueger, A. B. (2001). *Costs, benefits and distributional consequences of inmate labor* (No. 449). Industrial Relations Section, Princeton University.

<sup>55</sup> (Gilmore, 2007)

<sup>56</sup> LeBaron, G. (2012). *RETHINKING PRISON LABOR: SOCIAL DISCIPLINE AND THE STATE IN HISTORICAL PERSPECTIVE*. *WorkingUSA*, 15(3), 327–351, 346. doi:10.1111/j.1743–4580.2012.00397.x

<sup>57</sup> Barlow, D. E., Barlow, M. H., & Johnson, W. W. (1996). *The political economy of criminal justice policy: A time-series analysis of economic conditions, crime, and federal criminal justice legislation, 1948–1987*. *Justice Quarterly*, 13(2), 223–241, 226. doi:10.1080/07418829600092921

such as rent and food costs) will likely continue to form a strain on these relationships. From the economic standpoint, prisons may view this as simply another way to extract surplus value from these prisoners. A major drawback for prison industrialists is the increased cost of operating in the prison environment such as from work stoppages during prisoner headcounts or the unavailability of tools due to prisoner's security designations. Those imprisoned within the free world may be able to retain near-market wages from which the prison can then extract a larger amount of wealth, at the lowered cost of "de-carcerated" imprisonment. While some researchers have pointed out that prisoners are generally those most lacking in conventional job skills or training, allowing prisoners to remain within the free world will allow them to remain abreast of technological advances in the workplace that will likely preserve part of their earning potential (earning potential that will become prey to the remunerative demands of the state). Further, because the cheaper prison model may be less likely to be controlled by budgetary concerns, we may expect this lowered cost and increased profit potential from open imprisonment to allow for much larger swaths of the population to be imprisoned or monitored and to have their wealth extracted to feed the carceral state.

What happens to the "factories with fences" once the fences disappear? It is possible that the fences simply transform from the physical to the invisible walls of wage garnishment and restrictions on employment opportunities. The prison factory as an institution provides important lessons to capitalism, particularly regarding those systems of exploitation which remain relegated to the domain of prison labor. Prison industries have clustered into those niche industries with unique hazards to occupational health and safety or to job security. Prison labor is not an anomaly of regulated capitalism, but a niche of industries which markets and regulators have determined are economically necessary labor, but in which the precarity of worker's lives or livelihoods has become acceptable.<sup>58</sup> From the perspective of globalized markets, those industries which prison labor targets for "repatriation" are those which the state economy still considers necessary, but wherein the global financial market has lowered the wage to a level below subsistence level for free laborers.

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<sup>58</sup> (Lebaron, 2011), 298.

# Methodology

First, we begin by examining the size and scope of prison labor work. This includes both prison work constituted through the upkeep of the prison in maintenance, cooking, and cleaning, as well as work in prison industries producing goods and services to be sold on public or private markets. We examine the numbers of prisoners reported to be in each cohort (prison industry, prison maintenance, and work-exempt) and the levels of remuneration reported or estimated to be paid to these workers. We then use the prison cohort populations to form an estimate of the value that these workers' labor power represents based on the hours of work they may reasonably perform had it been compensated at the federal minimum wage rate.

After showing the magnitude of this labor as uncompensated work, and how compensating this work might affect the incarceration system, we examine the industries in which prisons have concentrated productive work. We look at those industries with the greatest concentration and provide some analysis on why these industries were chosen and how they reflect the greater goals or competencies of prison labor as a productive resource.

## Analysis

First, we calculated how much the “prison labor force” is worth by taking able-bodied prisoners times normal work hours times a normal wage. (Figure 2) Understanding that all able-bodied prisoners in the United States are compelled to work, we will aim here first to determine the number that population represents. The total number of state and federal incarcerated prisoners in 2019 according to the Bureau of Justice Statistics was 1,430,805.<sup>1</sup> UNICOR boasts that it employed 17,505 inmate workers during fiscal year 2019 and net sales of just over \$531 million.<sup>2</sup> Had those 17,505 FPI worker-inmates been employed in full-time labor at the minimum wage of \$7.25 per hour, their labor would be valued at \$263,975,400. (Figure 2) Had FPI been required to fully remunerate its inmate-workers at this price, doing so would have fully eradicated its \$60 million profit for the year.<sup>3</sup> This would appear to support the notion that prison industries would not be profitable without carving out minimum wage exceptions for prison workers. Within the sanctioned labor economy, prison labor is not competitive. This lends credence to the idea that industries do not serve purely an economic function, though they may retain an economic dimension.

Compare this calculation of the likely minimum wage value-equivalent of FPI labor to a report from the Washington State Jail Industries Board which showed just under \$25 million in minimum wage equivalent value with an inmate workforce of 12,131.<sup>4</sup> This comparison shows the Federal Prison Industries labor force to be valued at about seven times more than that of its Washington State counterpart. This may be in part due to scalability issues as Washington State Jail Industries operates many facilities with fewer than 100 inmate-workers with many inmate-workers not working full work hours in prison industry work (with the rest of their time split between prison maintenance work or other programming) as the report showed only 3,479,822 labor-hours worked, about 286.85 labor hours per worker inmate per year.<sup>5</sup> If the FPI worker-inmates were to have worked an equivalent number of hours in the year, the total FPI labor hours for 2019 would be around 5,021,374 labor hours, valued at just under \$36.5 million. At this adjusted value, if FPI maintained its actual revenue for 2019, at a similar labor utilization rate as that used in the minimum wage equivalent calculation by Washington State’s prison industry, it would have been possible to compensate all inmates at the federal minimum wage while still maintaining a modest profit at FPI. While this would challenge the notion that minimum wage compensation would be impossible for FPI to accommodate, it is possible that prison administrators were correct to speculate that this compensation (and its attendant drop in profitability for FPI) might lead to a dramatic drop in the labor utilization of FPI as well.<sup>6</sup>

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<sup>1</sup> Carson, E. A. (2020). Prisoners in 2019. (NCJ 255115), 4. Retrieved from [bjs.ojp.gov](https://bjs.ojp.gov).

<sup>2</sup> Federal Prison Industries, Inc. (2019). *Fiscal Year 2019 Annual Management Report*. Annual Report, U.S. Department of Justice, Washington, D.C., 10.

<sup>3</sup> (Federal Prison Industries, Inc, 2019), 16.

<sup>4</sup> Washington State Jail Industries Board. (2004). 2004 Offender Work Report: Offenders Working in Jails and for Communities. Jail Industries Board, Lacey, WA., 1.

<sup>5</sup> (Washington State Jail Industries Board, 2004), 7.

<sup>6</sup> (Government Accountability Office, 1993), 2.

A 1993 Government Accountability Office study on prison labor and the minimum wage calculated about 27.2 million labor hours for 15,300 prison industry workers at that time (an average 34.2 hours per week per worker).<sup>7</sup> At that labor utilization rate, our 2019 estimate for FPI labor hours would be around 31.1 million labor hours valued at over \$225 million if compensated at the federal minimum wage. This calculation suggests a much closer estimate to our original estimate based on each inmate-worker working approximately a full 40-hour week each week for a full year.

We attempt to compare the market value of the estimated prison labor power to the cost of the prison system to determine if prison labor is a profitable endeavor from a government standpoint. Figure 2 provides estimates for the market value of inmate labor priced at the federal minimum wage. For the years examined, the incarcerated population in federal prison involved in prison industries fluctuated from a low of 155,562 to a high of 205,723. The estimated value which BOP appropriated from inmates by compelling them to work while compensating them below the minimum wage rate fluctuated from a low of \$1.897 billion to a high of \$2.506 billion. (Figure 2) These cost savings for the Bureau of Prisons represents funds that otherwise would have to be purchased on the open market from local sellers and support jobs for free laborers, if BOP were to retain similar levels of incarceration and employment. If we consider the counterfactual in which BOP were required to purchase these services at market rates, or at least pay the minimum wage, it is unclear whether incarceration rates would be reduced to prevent overspending in these areas, or if services would be reduced drastically. Further, because BOP is mandated to ensure full employment where possible, this sometimes results in over-manned work assignments which, while inefficient for economic production, vastly aid prison management by occupying prisoners' time and effort.<sup>8</sup> These considerations further confound any conclusions we might draw from this analysis and make it difficult to be entirely sure of how to assess the value of prison labor with regards to prison maintenance work.

Considering BOP's FY 2019 budget of \$7.276 billion, had the BOP compensated both its prison industry and prison maintenance inmate-workers at the federal minimum wage while maintaining equivalent hours of work according to our calculation (Figure 2), the BOP's budget would have been significantly impacted by this change.<sup>9</sup> Further, considering the ways in which prison systems have reacted to previous budget shortfalls through early releases and other methods of decarceration (such as encouraging minimal sentencing), it is possible that the prison system would not, in the short-term, be able to raise budgets to meet this increased cost and instead would work to reduce expenditures through prison reduction and reduced sentencing in the courts.<sup>10</sup> Currently, FPI pays remuneration to inmate workers reported in the "Other expense" category of its financial reports, equivalent to \$1.361 million in 2019, but this amount includes other expenses such as "sales consulting fees, maintenance agreements, and distributions to factory operations," nonetheless we shall treat this entire amount as constituting the maximum that

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<sup>7</sup> (Government Accountability Office, 1993), 6.

<sup>8</sup> (Government Accountability Office, 1993), 8.

<sup>9</sup> Bureau of Prisons. (2020). *FY 2020 Budget Request At A Glance*. (pp. 1). Washington, D.C.: Bureau of Prisons.

<sup>10</sup> See Lofstrom, M., & Martin, B. (2015). Public safety realignment: Impacts so far. *Public Policy Institute of California*. for an analysis of California's "realignment" after court-ordered a reduction of prison populations in response to overcrowding.

(See also Miranda, M. P., Costa-Lopes, R., Freitas, G., & Carvalho, C. L. (2021). Early release from prison in time of COVID-19: Determinants of unfavourable decisions towards Black prisoners. *PloS one*, 16(5), e0252319 for an analysis of prison release programs in response to the effects of Covid-19 in prison populations.)

FPI may have paid in inmate wages during these years, to ensure our estimates of prisoner remuneration are not underestimated.<sup>11</sup> This results in a \$2.272 billion valuation for federal prison labor in 2019, with less than 5% of that being provided to prisoners as compensation. (Figure 2) When we consider that portions of prison-worker compensation are also used to offset victim's relief and to provide for child-support or other services, the government's privation of prisoners' bodies in compelled labor is even more stark.

One way to conceptualize how minimum wage compensation would affect the prison population or the effectiveness of prison management, is to consider current prison costs and the current rate of federal spending per inmate. The BOP's FY2020 budget included \$7.778 billion to house 155,562 inmates at a cost of roughly \$50,000 per inmate.<sup>12, 13</sup> While this amount is quite a bit higher than BOP's own internal estimates for per capita costs, the 2020 data may have shown higher costs per inmate due to inmates being released in response to the Covid-19 pandemic which occurred well after the budget had been set.<sup>14</sup> Using this higher budgeted inmate cost, if the federal government were unable to expropriate the inmate labor value from the Figure 2 calculations for 2019, it would need to house 54,400 fewer inmates to maintain within its budgetary constraints, a 30% reduction in the federal prison population.

For prison abolitionists and decarceration proponents, this data may suggest that efforts to ensure the application of federal minimum wage protections to prison laborers may change the calculus of the current carceral state so as to reduce prison populations. Further, because the current determination of inmates as not covered by the Fair Labor Standards Act was made by the courts and not the legislature, subsequent legal reinterpretation may further impose other per-inmate costs on prison employers such as compliance with safety standards.<sup>15</sup> Imposing these additional per-inmate costs on prison employers might then result in decarceration to maintain prison costs within budgetary constraints. Any state-focused strategy of this kind, however, should keep in mind that these types of major changes may just as well result in equally large backlash, including through the subsequent increases of prison budgets to meet these additional costs imposed.

Prison labor is also used in reproductive labor. We attempt to evaluate the additional costs associated with imprisonment if prisoners' below-market labor were not subsidizing prison maintenance. Separate from prison industry work, prison maintenance work remains the bulk of prison labor assignments, while also being the most meagerly compensated. While Figure 2 shows one scheme for measuring the uncompensated value of this labor, its position as reproductive labor makes it of a different qualitative nature than the value derived from prison industry labor. The comparison of prison maintenance work valued at the minimum wage rate is useful for understanding how it relates to similar work purchased on the open market but, because reproductive labor is necessarily devalued in a capitalist system, this may not accurately capture the way in which prison maintenance work appropriates inmates' bodies for the perpetuation of the carceral state. Because reproductive labor is a requirement for perpetuating productive labor, the profits from prison industry work would not be possible without the maintenance work done by the

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<sup>11</sup> (Federal Prison Industries, Inc., 2019), 29

<sup>12</sup> Federal Prison System (BOP). (2021). *FY 2021 Budget Request At A Glance*. Washington, D.C.: Bureau of Prisons.

<sup>13</sup> Bureau of Prisons. (2021). [Statistical data on inmate population]. *Past Inmate Population Totals*. Retrieved August 3, 2021 from [www.bop.gov](http://www.bop.gov)

<sup>14</sup> Federal Prison System. (2012). *Per Capita Costs FY 2012*. Washington, D.C.: Bureau of Prisons.

<sup>15</sup> (Vanskike v. Peters, 1992)

vast majority of inmate laborers, even if that maintenance labor is considered to be of the lowest value, and paid so.<sup>16</sup>

If prison maintenance workers did not conduct the cleaning, cooking, and daily care of the prison facilities, it would not be possible to house inmates in prison at all, let alone turn a profit from their work. Because prison maintenance workers perform work on-site and often live in the same facility, they save the prison substantially in costs for transporting workers or bringing in workers from outside of the prison environment. The cumulative effect of this constant maintenance may be impossible to determine, but prison managers note the necessity of this labor regime in maintaining the regular order of prison life.<sup>17</sup> If prisoners were not constantly engaged in the menial labor of reproducing prison life, the prison would have to bear both the costs of this reproduction and the additional costs of managing the unabated tedium of prison life.

Compulsory reproductive labor additionally bears a strain that is qualitatively different from the strain involved with coerced productive labor. Even within the often economically uncompensated realm of reproductive labor, customarily reproductive laborers can derive profound satisfaction from the emotional connection to their reproductive labor.<sup>18</sup> In the case of prisoners' forced reproductive labor, this can instead become a site of profound despair, as they are aware they are perpetuating the physical space of their own incarceration and maintaining the prison system through their reproductive labor. Reproductive labor in the home or in social groups can be a site of mutual healing, whereby an emotional laborer may bear the brunt of the emotional work, but in return receive the special status or enhanced emotional bond that comes with this position. For the prison maintenance laborer, even reproductive labor becomes another "extrusion" of work from the body of the inmate to pad the prison budget.<sup>19</sup>

In the years examined (2014–2019), FPI reached a market share of greater than 10% in 10 industries: Modification of Prefabricated Buildings & Components (98% average over years examined); Retrofitting Services (75%); Toiletry Kitting Services (38%); Men's Underwear & Nightwear (32%); Air Purification Equipment (21%); Cabinets, Lockers & Shelving (17%); Household Furnishings (16%); Tableware (12%); Standard Forms (11%); Clothing, Special Purpose (9%). (Figure 3) FPI market share tends to be focused in areas where labor value makes up a large portion of the product (services, modification, equipment, and furnishing). Further, the list includes printing of Standard Forms which can carry additional issues with toxicity for workers, consistent with expectations from the literature.<sup>20</sup> Tableware and the clothing categories appear to be the only ones where repatriation may play a role, but recent FPI reports show that repatriation accounts for only a slim minority (less than 1%) of FPI revenue, suggesting that the federal procurement market will remain the primary source of revenue for FPI.<sup>21</sup>

FPI's most consistent market share dominance is in Modification of Prefabricated Buildings & Components, where all years examined showed more than 96% share of the federal procurement

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<sup>16</sup> Elson, Diane. 1999. "Labor Markets as Gendered Institutions." *World Development* 27 (3): 611–27.

<sup>17</sup> (Government Accountability Office, 1993), 7.

<sup>18</sup> Griffith, D., Preibisch, K., & Contreras, R. (2018). The value of reproductive labor. *American Anthropologist*, 120(2), 224–236, 230.

<sup>19</sup> WEISS, R. P. (2001).

<sup>20</sup> (Jackson, Shuman, & Dayaneni, 2006)

<sup>21</sup> Federal Prison Industries. (2021). *SECTION I – FY 2020 FPI SALES BY 4-DIGIT FSC CODE AND CUSTOMER*. Washington, D.C.: U.S. Department of Justice.

market. This may be due in large part to the nature of this industry. Because prefabricated buildings and components tend to be used in conjunction with complementary parts, past purchases may tend to generate or incentivize future purchases. Thus, those government agencies which are purchasing prefabricated parts may continue to source largely from FPI to maintain a certain consistency throughout their projects.

Retrofitting Services experienced the largest change in market share during the years examined. FPI points to the Department of Homeland Security's purchase of these services from FPI, which has continued throughout the years studied.<sup>22</sup> This suggests that some federal procurement markets may be largely dominated by single agencies controlling large portions of market share. This is consistent with FPI's own analysis of its reasoning for pursuing opportunities outside of federal procurement, though its non-federal market sales have been minimal.<sup>23</sup> It will be interesting to see if FPI maintains this market dominance as it has in the Modification of Prefabricated Buildings & Components category.

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<sup>22</sup> Federal Prison Industries. (2018). *Fiscal Year 2017 Market Share Report*. US Department of Justice. Washington, D.C.: Federal Prison Industries.

<sup>23</sup> (Federal Prison Industries, Inc, 2019). 5.



## Discussion

If the prison system were required to maintain the additional cost of paying prison laborers the minimum wage cost of their labor, and the prison population was thus reduced according to our analysis to maintain costs, there would need to be a 30% reduction in prison populations. Further, the increased costs of prison maintenance and reduced profits in prison industry would reduce incentives towards prison expansions and new prison development. Prisons are not wholly isolated from economic forces, and their participation within the economy through prison labor remains a key locus through which to exert pressure on the prison system. Opportunities exist within and outside prison walls to leverage this economic position in the service of decarceration and prison reduction or abolition.

For prisoners, strikes and coordinated work refusals remain an integral part of collective power building within the prison environment. Due to the totalitarian nature of the prison environment, and prison management's liberal use of solitary confinement, administrative transfers, and increased punishment for leaders in prison organization, and the vulnerability of prisoners to inducements to inform on these leaders, maintaining internal security measures and strict security culture can be vital to ensuring long-term viability of these collective movements. In the prison environment, where all social organization is necessarily constrained, this type of secrecy may be the norm, particularly in sites with increased managerial control such as high-security environments. The decentralized nature of anarchist organization within these environments provides a particular means by which to avoid the dangers of centrality in the totalitarian environment. Social organization within disparate autonomous groups may sacrifice some level of unity but can, through strong social solidarity and informal communication networks, establish a powerful means to react to situations within prisons or to resist specific retaliation from prison management.

While large-scale strikes and work stoppages are a powerful means of flexing prisoner power, individual resistance and friction against prison management can be an effective strategy as well, one that does not carry the heightened penalties of direct attacks against the prison profit system, such as striking, or the attendant risks from coordinated action with potential informers. Nevertheless, individual resistance actions can bear harsh consequences in instances where a prisoner's resistance action falls far outside the norm for the environment, but, because prison management principles take into consideration the general norms around resistance behaviors, prisoner movements may build their strength by moving these norms towards cultures of resistance. Undoubtedly, small-scale resistance takes place constantly between prison management and prisoners, but a large impediment to cultures of resistance are the possibility of informants or strike-breakers ("scabs"), ever-strengthened by the desperation of the prison environment, and the ability of prison management to use transfers between prisons to break up resistance movements and bring in new prisoners who lack the social ties necessary to a strong resistance culture. In some instances, the presence of prison gangs and other self-organization may be a force supporting resistance culture, but these same forces have also been used for the policing of

prisoners as well. The influence of the constrained economic environment will remain a pervasive influence on the ability of prison organizations (such as prison gangs) to sacrifice building effective resistance culture in exchange for maintaining profitability and control of necessary supply lines or information, but nonetheless, these organizations can be powerful forces for coordinated resistance when their goals are in line with widespread prison resistance.

Engendering a strong prison resistance culture within US prisons thus requires gaining some influence on the tendency for a prisoner to inform, which can be done by showing the power of resistance movements to accrue material gains for prisoners. Traditionally, these gains have been won through a combination of coordinated prison action (such as strikes in retaliation for prison management reprisals against specific inmates who are either well-respected or are representative of an underlying tension in the prison system) and work outside of prisons to spread news to outside agencies to exert pressure on the public face of the prison system and draw attention to the underlying conditions that produced the prisoner resistance. The power of prisons to erase these gains through coordinated transfers and administrative punishments, and the difficulty in maintaining public attention on issues taking place within prison walls, makes it difficult for prisoner resistance movements to retain much of their gains. In part, this is management strategy. If prisoners win gains in only one prison, transferring those prisoners out of that prison will lose them those gains, and new transfers into the prison may have no knowledge of the history of resistance that created those gains, nor the social ties necessary to take any personal risk in resisting any loss of those gains.

Prison resistance culture also requires that individual prisoners see their own gains as tied to the gains of prisoners as a class. The ways in which older prisoners mentor and guide new prisoners regarding methods of resistance can be a crucial part of this acculturation. Initiation rights and occult knowledge in prison gang culture likely form an important part of this “spiritual” aspect of prisoner resistance, enabling prisoners to identify with the organization itself and become willing to take on personal sacrifice in furtherance of the organization’s goals. In high-security environments where prisoner-prisoner interaction is minimal, the interaction that does happen, through passed notes, mail, non-verbal communication, and speaking in passing, may be the only opportunities to create social bonds. In these environments, the interaction of outside elements such as prisoner-support groups or lawyers can be integral to maintaining lines of communication. In prison groups where one or more prisoners has some access to members on the outside, these connections may be the only way to garner outside attention on prisoner grievances. Grieving, collectively and through prison social groups, can be a powerful motivator towards large-scale prisoner resistance. Due to the immense sacrifice that prisoners endure in retaliation for strikes and coordinated resistance, these actions tend to take place most successfully in response to individual grievances such as particularly harsh treatment of a prisoner. As prisoners share their grievances regarding this treatment, and others like it, resistance can spread and become widespread. Forming strong prison resistance cultures can help ensure prisoners have the power to take these actions while protecting each other and themselves from the worst reprisals and gain some concessions from prison management.

Prison labor regimes provide prisoners some degree of control over the prison system itself. Because prison functioning is so dependent on cooperation from prisoners through their labor, withholding this labor, or providing inadequate labor, can play a strong role in prison resistance. It is not economically feasible to maintain the prison system while replacing prison maintenance work with equivalent services purchased at market value. Isolated strikes or resistance can be

thwarted by strategic transfers and other aggressive prison management techniques, but building prison resistance culture into the norms around prison labor can help bring avenues towards abolition. Prison management is highly focused on maintaining order within prisons, but its capabilities are necessarily limited by the economics of prison systems. Because prison systems are largely subsidized today by prison labor regimes, prison labor resistance is a key area for applying stress to the prison system and working towards abolition.

From an initial economic analysis, the prison industry system would appear to be a relatively insular economy. It is typified by products created for the federal procurement market, in factories managed by FPI, with the sole purpose of meeting those federal procurement needs. But there are several ways in which the prison industry system comes into contact with the larger market and, in doing so, becomes vulnerable to market and political pressures. Because the federal procurement market is not wholly isolated from private bidding, FPI must remain competitive within that market to gain federal sales. It further faces political pressures against obtaining large market share in any industry where significant profit potential exists within the free labor economy, directed by industry representatives on the FPI Board. Where prison industries take jobs away from free laborers, these laborers, particularly if they are party to a strong union, have the opportunity to build solidarity with prison laborers and encourage strike activity inside and outside prison walls.

Where this separation between the “outside” market and the “inside” reality of the totalitarian prison labor regime breaks down is in the prison maintenance labor system. These jobs tend to be the lowest paid and the least desirable. Prison maintenance jobs, however, are the primary duties required to keep the prison operating. Without prison maintenance jobs being completed, there would be no prison industries, and the prison system itself would collapse under the weight of its own internal costs. Because the overmanning of prison maintenance jobs is used as a prison management tool (prison labor for activity), taking control of their own time is a powerful way that prison maintenance workers can resist prison management. When a prison maintenance crew refuses to clean guards’ areas or perform other servile work, they challenge the prison system directly by challenging the relationship of their bodies to the existence of the prison.

Because prison work is an integral part of prison management systems, continuing the prison labor regime is a necessary function of the prison system. It cannot function with prisoners unable to work because there is not enough programming or prison personnel to manage the prison environment without the make-work of prison labor. Thus, prison labor resistance is not just an attack on the fiscal soundness of the prison, but also on the relationship of prisoners to prison management. The prisoner out of work is a threat to the prison system itself. Large-scale prison labor resistance, coupled with campaigns inside and outside prisons to inform solidarity actions such as boycotts and solidarity strikes of prison-labor industries, can deal such a blow to the prison system that decarceration becomes the only method for the prison to maintain itself as an institution.

The prison labor industry retains some isolation from free labor due to its concentration in the federal procurement market. Non-prisoner federal workers employed by agencies purchasing prison labor products may be another site of pressure for prison labor to target for solidarity actions. While these workers may be working directly for agencies which are most responsible for oppressing them, such as the Department of Justice or the Department of Homeland Security, the ability of federal employees is additionally constrained by bans on strikes by many public sector unions. While this constrains federal employees’ ability to strike openly, the protections inherent

to the federal system provide a certain cover for actions such as selective strikes or refusals to perform certain work (such as refusals to obtain or sign for goods sourced from prison industries involved in labor disputes). Solidarity along these lines will likely come from appeals to the same labor concerns that lead Samuel Gompers to oppose state profiteering from prison labor.<sup>1</sup> Prison labor regimes degrade the labor market for free laborers and remove any respectability from employment relations.

Because prison industries largely only obtain a small portion of their revenue from the public market and from repatriation sales, the ability of the general public to effect change through boycott or other direct means is limited. While publicity campaigns have had success in preventing companies from sourcing goods through prison labor, pressure campaigns in the federal procurement market may need to operate on a different footing. Public interest work focused on the federal procurement market has made gains in the past, and targeting prison industry or prison labor procurement may be a potential area for future work.<sup>2</sup> Because of the concentration of the federal procurement market in prison industry, targeted campaigns against single agency procurers may have a strong effect on crippling the prison industry regime. Further, given FPI's insistence that prison industries remain a profitable endeavor, bringing net income into the federal government remains a central focus of its marketing campaign. Reducing or eliminating this profitability would be a significant propaganda victory for prison labor abolitionists.

In the United States, prison labor's exemption from federal labor protections significantly impairs prisoner-workers' ability to organize, grieve, collectively bargain, require workplace safety inspections, obtain market wages, or to refuse work. These reduced protections provide significant savings to the prison labor regime in terms of prisoner-worker remuneration and overhead. These cost savings are not the reflection of an efficient labor market, but rather a wholly inefficient one. Because prison laborers are not free to withdraw their labor, or choose to do other labor (such as working for themselves or together with other prisoners), but are rather compelled to work under the current prison labor regime, the prison labor market exhibits monopsony conditions wherein the "cost savings" to the prison labor regime simply reflect a shifting of the costs of labor reproduction onto the worker and their dependents. This further echoes the AFL's claims in the 1920s that prison labor was harmful to all labor because it degraded the dignity of work.<sup>3</sup> Involuntary labor, particularly at below market rates, does not allow the prisoner-worker to be an effective economic provider to dependents, and can often instead result in dependency as prisoners struggle to use their meager earnings to cover court fees, victim restitution, and the costs of their imprisonment. Bringing prison laborers out of the working underclass and allowing them to work on equal footing as free laborers can help offset the economic power relation of prisons to prisoners. By raising the costs of prison labor, prison work may become competitive with free labor. Or, at least the reduced differential between profits from prison workers and those from free workers may help reduce the transfer of free laborers' jobs to prisoner-workers. One method of reducing this differential is to provide fair worker protections in prison labor. While the legislature has the ability to include prisoner-workers within the protections of existing federal labor legislation, the current classification of the prison-prisoner relationship as primarily a custodial relationship and not an employment relationship is the result of "judge-made law" and is subject

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<sup>1</sup> (American Federation of Labor, 1921)

<sup>2</sup> Nader, R. (2014). *Unstoppable: The Emerging Left-Right Alliance to Dismantle the Corporate State*. Bold Type Books.

<sup>3</sup> (American Federation of Labor, 1921)

to reinterpretation. Further, because the administration of prisons (within the strictures of existing law) is largely under the purview of the executive branch, the possibility of changing the administration of existing laws to provide certain protections is within the power of that branch as well. The unwillingness of the government to clearly define its policy regarding prison labor provides various possibilities for affecting change through pressure applied from prisoner actions in conjunction with pressure campaigns to focus blame for prison inequities and its threat to free laborers on particular bureaucrats, legislatures, and judges with the government authority to affect change in these areas.

Ultimately, actions relying on change from the government require a certain capitulation to the terms of incarceration. While prison labor actions and outside pressure are powerful tools for controlling the ability of the government to maintain the system without providing some concessions, the concessions it provides will necessarily be designed to maintain the status quo. Abolition is unlikely to come from decree, but these actions do have concrete effects, and governments exist in the real world where their power is less than unlimited. Non-abolitionist strategies, such as working for piecemeal gains in prison labor conditions or increases to prison labor remuneration do provide material benefits to individual prisoners. But by maintaining the prison labor regime intact, these strategies risk strengthening the overall position of the government within the reality of government responses to resistance. This is not a renunciation of those tactics which may result in better conditions for prisoner-workers. It is an affirmation that the locus of power is in the hands of workers and the public, not in the hands of government. Government responses necessarily take into consideration what is possible for the government to enact, and that is largely dependent on the willingness of workers and the public to resist government action. Within the context of prison labor, prison labor resistance, both within and outside prison walls, involves pressing this worker and public power on the state's prison labor regime. The government may react to preserve itself through granting concessions, or through harsh reprisals, but both of these actions are responses to the real power that people have over governments. Economically pressuring the prison labor system by increasing the cost of labor or decreasing the revenue from sales of products or services may have a significant effect on the viability of prison labor systems, and therefore the prison system itself.

Because prison labor is necessary for the economical functioning of the prison system, making prison labor financially infeasible can be a significant force towards abolition of prison itself. The prison that is unable to garner labor power from its prisoners will not be able to maintain any sizable population without purchasing these goods and services off the free labor market. The economic environment of US prisons does not allow for this level of purchasing for any sustained period of time. Thus, to preserve itself, the prison system deprived of prison labor would need to resort to massive decarceration as a self-preservation mechanism. If this strategy were successful in saving the prison system from its own internal contradictions, the increased costs of maintaining the prison environment would likely cap future prison populations as well. Regardless, reducing the prison population is not the same as abolition. To move from reduced prison populations to total abolition requires a more fundamental reordering of the power relation between prisons and the public. Unless those not in prison take an active role in opposing the prison regime, prisons will continue to find new victims to fill prison ranks. Solidarity between prisoners and those outside prison walls allows prisoner resistance to make waves outside of prison walls and directly affect the lives of prison administrators, government officials, and capital interests. Further, because prisoners are economically constrained by the realities of the

prison environment, having access to outside resources can greatly bolster prison resistance efforts. The emotional and psychological strength needed to resist in prison can be strengthened by solidarity from people outside of prison, and those outside prisons are often in a better position to follow up on prison grievances, complaints, and administrative processes and to monitor management reprisals for resistance.

Prison abolition is the most direct protection against the bastardization of labor that is prison labor. As long as prisoners are forced to work, and to do so for little pay with few safety protections, free labor will not be safe. The prison labor system is simply the totalitarian regime that capitalists look to as the ultimate employment relation. The worker is reduced to a commodity, and the surplus value is extruded from the worker, like a resource to be mined or harvested. Where prison industries exist, free laborers work under the threat of job loss to the prison next door, to workers with no choice. It is true that the prisoner-worker represents in a sense the ultimate boogey-man to labor. The prisoner-worker is a strike-breaker with no escape, no lines of communication, and few or no social ties with the free laborer. But this threat can be demystified. The prisoner-worker acting in solidarity with free workers undermines the entire prison system by their resistance. They ensure that the “natural resource” of labor-commodity cannot be extruded, and that the prison system cannot exercise full control over the bodies of prisoners (and those of the free laborers it works to impoverish). Resistance is the affirmation of the personhood of the prisoner and the worker, that capital will not recreate totalitarianism everywhere, and assures that the worker retains an autonomous self, rather than becoming a resource for capital’s exploitation.

# Conclusion

Productive and reproductive labor in prison is not an entirely market function or an entirely non-market function. Prison managers, particularly under post-Fordist styles of budgetary conscious management, work to contain costs and squeeze surplus value from the available labor pool through all available means. Within the prison industry, this can mean removing safety protections, endangering workers, providing sparse training, and leaving workers completely exposed to fluctuations in labor demand. Within prison maintenance work, this often means the use of prison work as a substitute for programming such as classes or activities to occupy prisoners' time or meet rehabilitative goals. Prisons, even when treated as such by their managers, are not solely profit centers. They are necessary components of the overall capitalist process by providing visible means of coercing the lowest classes of free workers through intimidation: "Lose your job and you might end up here!" Through their operation as worksites, prisons further degrade the protections of free workers by showing that a workplace can be operated without regard for the needs or desires of its workers.

Prison labor threatens the free labor market indirectly through its positionality as the workplace of the lowest underclass, but it also competes with the free labor market directly for production jobs and maintenance work. All prison work represents work that could be done by a free laborer, with adequate protections and for just compensation. When prison work is used as a management tool to keep prisoners busy, it takes the place of programming which could otherwise provide for the betterment of prisoners and their successful reintegration.

But prison work remains a significant opportunity for resistance against the prison regime. By resisting work in prisons, and by refusing to work with prison produced goods, people can directly oppose prison labor regimes. Because prisons require prison labor to operate, this resistance can directly threaten prison itself. Prison labor resistance deserves a central focus in prison abolition work, and people outside prison walls can work to make prison labor untenable as an economic system. Solidarity with prisoner-workers as workers helps maintain the strength of worker power and prevents the division of labor pools into subject classes for exploitation and manipulation. Significant avenues for reform within the prison system exist, but making prison labor uneconomical directly serves prison abolition. Prison labor resistance by prisoner-workers raises the cost of prison labor, and solidarity strikes and targeted work refusals (refusing to work with prison-made materials) decreases the revenues to prison industries. Coordinating in-prison actions with out-of-prison publicity and demands for proper inmate pay so that inmates can take care of their dependents and themselves and compete fairly with free laborers for prison work can make prison maintenance work unprofitable. The prison labor regime attempts to isolate itself from market forces and public pressure, but avenues for resistance focused on prison abolition can make the prison system itself unfeasible.

# Figures

## Figure 1: FPI Annual Financial Reports



Business Segment	Fiscal Year					
	2015	2016	2017	2018	2019	2020†
<b>Agribusiness</b>						
Net Sales	7290	5795	6225	6647	6436	7673
Earnings	947	-2892	-230	256	-1064	136
<b>Clothing and Textiles</b>						
Net Sales	177474	196097	126382	121702	127242	121923
Earnings	16366	32633	21287	17933	11265	1878
<b>Electronics</b>						
Net Sales	134627	126999	41445	44655	37885	21321
Earnings	-2620	-8661	3450	3883	9423	4452
<b>Fleet</b>						
Net Sales	*	*	118510	187416	138992	85262
Earnings	*	*	2033	8558	9747	5592
<b>Office Furniture</b>						
Net Sales	99338	120488	113791	89433	99540	81381
Earnings	2224	14063	12607	7754	11353	7869
<b>Recycling</b>						
Net Sales	17227	13904	11816	15726	17064	17473
Earnings	5021	1982	4008	7382	8439	9153
<b>Services</b>						
Net Sales	35944	35122	35594	37259	39588	28191
Earnings	5888	7055	6986	8267	12003	5047
<b>Total</b>						
Net Sales	471900	498405	453763	502838	466747	363224
Earnings	27826	44180	50141	54033	61166	34127

\*Federal Prison Industries did not operate in Fleet during 2015 and 2016

†Federal Prison Industries noted significant declines in sales and earnings during the second half of 2020, attributed to the COVID-19 pandemic

Figure 1 was created from the Annual Financial Reports published by Federal Prison Industries. The segments Agribusiness, Electronics, Office Furniture, Recycling, and Services provided data for each year from 2015–2020. Fleet was not a recorded category in 2015 and 2016. The data for 2020 is included but FPI did note in their report a large drop in sales and earnings during the second half of 2020 which was attributed to the COVID-19 pandemic and its economic effects. This data is included for completeness, though it may point to an interesting consideration.

While prison factories did produce some protective personal equipment in response to the COVID-19 pandemic, prison factories may not be well suited to quickly setting up facilities to enter new industries or markets when sudden demand occurs. One factor noted is that prison laborers may not be well suited for employment due to lack of prior work experience or training and thus may require remedial training before being ready to suitably perform prison factory work, thus increasing the difficulty of setting up new prison industries in short order.<sup>1</sup>

## **Figure 2: Analysis of Estimated Value of Prison Labor**

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<sup>1</sup> Rampey, B.D., Keiper, S., Mohadjer, L., Krenzke, T., Li, J., Thornton, N., and Hogan, J. (2016). Highlights from the U.S. PIAAC Survey of Incarcerated Adults: Their Skills, Work Experience, Education, and Training: Program for the International Assessment of Adult Competencies: 2014 (NCES 2016–040). U.S. Department of Education. Washington, DC: National Center for Education Statistics, 6. Retrieved May 28, 2021 from: [nces.ed.gov](https://nces.ed.gov).

Business Segment	Fiscal Year						
	1993	2015	2016	2017	2018	2019	2020†
<b>Total Inmates</b>							
Reported (A)	88565	205723	192170	185617	181698	177214	155562
Expropriated Inmate Labor Value (J)	*	\$ 2,506,575,049	\$ 2,340,801,491	\$ 2,266,859,437	\$ 2,215,484,560	\$ 2,159,969,534	\$ 1,897,613,233
Remuneration at Min Wage (H)	\$ 1,135,524,000	\$ 2,637,649,228	\$ 2,463,881,297	\$ 2,379,862,906	\$ 2,329,615,985	\$ 2,272,124,994	\$ 1,994,516,846
<b>FPI Inmate-Workers</b>							
Reported (B)	15300	12278	10896	16891	17041	17505	16478
Estimated Actual Remuneration (E)	*	\$ (4,236,000)	\$ (3,798,000)	\$ (4,246,000)	\$ (221,000)	\$ 1,361,000	\$ 571,000
Remuneration at Min Wage (F)	\$ 230,724,000	\$ 185,152,240	\$ 164,311,680	\$ 254,716,280	\$ 256,978,280	\$ 263,975,400	\$ 248,488,240
<b>Maintenance Inmate-Workers</b>							
Estimated (C)	60000	162632	152491	140925	137443	133166	115784
Estimated Maximum Actual Remuneration (I)	\$ 49,920,000	\$ 135,310,179	\$ 126,872,806	\$ 117,249,469	\$ 114,352,425	\$ 110,794,460	\$ 96,332,613
Remuneration at Min Wage (G)	\$ 904,800,000	\$ 2,452,496,988	\$ 2,299,569,617	\$ 2,125,146,626	\$ 2,072,637,705	\$ 2,008,149,594	\$ 1,746,028,606
<b>Non-working Inmates</b>							
Estimated (D)	13265	30813	28783	27801	27214	26543	23300

1. 1993 figures are from GAO Report

2. D =  $D_{1993}/A_{1993} * A$

3.  $D_{1993} = A_{1993} * B_{1993} * C_{1993}$

4. C = A - B - D

5. E = "Other Expenses" category from Notes to Financial Statements. This category showed considerable variation through these years compared to the number of inmate-workers reported, indicating that fluctuation in this category is likely largely due to factors other than actual inmate wages. This amount "is comprised primarily of gainsharing awards for staff and inmates, sales consulting fees, inmate wages, maintenance agreements, and distributions to factory operations." (Federal Prison Industries, Inc., 2016)

6. F = B \* (40 hours per week) \* (52 weeks per year) \* (\$7.25 minimum wage per hour)

7. G = C \* (40 hours per week) \* (52 weeks per year) \* (\$7.25 minimum wage per hour)

8. H = F + G

9. I = C \* (40 hours per week) \* (52 weeks per year) \* (\$0.40 maximum wage per hour)

10. J = H - E - I

\* No data available

† These numbers may have been affected by the Covid-19 pandemic which allowed for increased authority to give inmates compassionate or early release, and also reduced demand for some goods and services produced by prison labor.

The 1993 GAO study provides some further insight into the work performed by maintenance workers performing prison upkeep. Of the approximately 80,000 inmates housed by the BOP at the time, BOP officials estimated 60,000 worked in prison upkeep, with an additional 15,300 working in prison industries.<sup>2</sup> Using this data we can see that the proportion of inmates which are able to avoid work assignments due to disability or age is quite minimal, with the vast majority of work assignments being in prison maintenance. In an attempt to determine the present-day value of prison maintenance work by inmate-workers, we will assume these proportions of non-workers to have remained relatively stable through time, and apply this proportion to the 2019 federal prisoner population.

In 2019, the total federal inmate population was reported at 179,898 prisoners. If we assume a similar portion of work assignments to the 1993 GAO study, we would expect to see an estimated 134,923 inmate workers in prison upkeep, and 34,405 workers in prison industries, with the rest non-working. Because we know UNICOR reported far fewer worker-inmates, at only 17,505, we can deduce that there has been a shift in the proportion of work assignments since the 1993 study. Assuming total inmate-employment has remained at a similar level, we would expect that currently 10,569 workers are non-working. Deducting the 17,505 known FPI worker-inmates from the total federal prison population would leave about 151,824 inmates working in prison upkeep and maintenance. Expecting that each of these inmate-workers are assigned to 40-hour work-weeks during the course of the year to meet the BOP requirement of 100% inmate employment, this amounts to 315 million labor hours, valued at \$2.289 billion at the federal minimum wage.

### **Figure 3: Chart of FPI Market Share in Significant Industries <sup>3, 4, 5</sup>**

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<sup>2</sup> (Government Accountability Office, 1993), 19–20.

<sup>3</sup> Federal Prison Industries. (2020). *Fiscal Year 2019 Market Share Report*. U.S. Department of Justice. Washington, D.C.: Federal Prison Industries.

<sup>4</sup> Federal Prison Industries. (2017). *Fiscal Year 2016 Market Share Report*. U.S. Department of Justice. Washington, D.C.: Federal Prison Industries.

<sup>5</sup> Federal Prison Industries. (2016). *Fiscal Year 2015 Market Share Report*. U.S. Department of Justice. Washington, D.C.: Federal Prison Industries.

Market	2014	2015	2016	2017	2018	2019	Std Dev	Mean
4460 Air Purification Equipment	16.2	22.5	15.4	23.3	28	18	4.87469657	20.5666667
7125 Cabinets, Lockers & Shelving	17	17.4	15.7	13.2	14.6	22.9	3.36511515	16.8
7210 Household Furnishings	12.8	14	13.8	9.9	15.4	28.8	6.63638958	15.7833333
7350 Tableware	25.7	21.5	7.1	8.3	3.6	4.8	9.35813372	11.8333333
7540 Standard Forms	16.1	11.1	9.4	10.3	9.8	9.9	2.51634656	11.1
8415 Clothing, Special Purpose	17.2	12.3	10.5	5.5	5.1	5	4.96816532	9.26666667
8420 Men's Underwear & Nightwear	15.3	21.8	20.4	40.2	26.4	64.6	18.3141202	31.45
J085 Toiletry Kitting Services	74.5	40.6	19.8	31	21.8	41.7	19.9752514	38.2333333
K023 Retrofitting Services	26.3	68.2	57.8	97.9	100.3	97	29.5338055	74.5833333
K054 Modification of Prefab. Buildings & Components	98.7	98.6	97.8	96.3	98.9	97.4	0.99347874	97.95

Figure 3 shows market share information from years 2014–2019 provided by FPI showing only those markets which were determined to be significant industries. The criteria used to determine significant industries was any market in which FPI reached a market share of more than 10% for any of the years covered. The market share data is total FPI sales in that category as a percentage of the total federal procurement market for that category. The column “Std Dev” shows the standard deviation of the market share value for the years covered. The column “Mean” shows the average of the market share value for the years covered.

#### **Figure 4: Line Graph of FPI Market Share in Significant Industries**

### FPI Market Share in Significant Markets

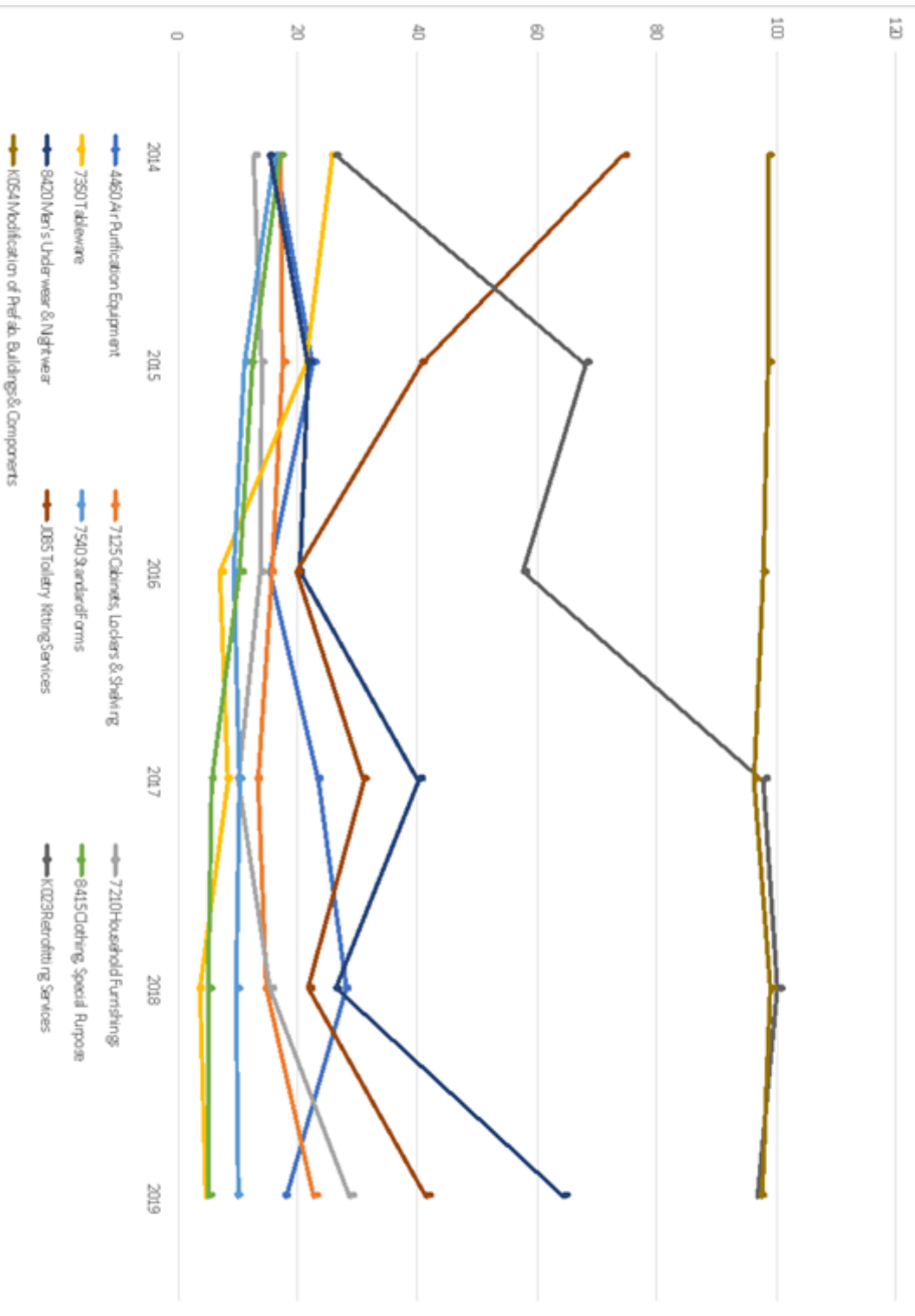


Figure 4 is a line graph showing the market share data for the covered years for each market in Figure 3. The charge of Federal Prison Industries includes a “sometimes contradictory” requirement to employ inmates while also ensuring that “no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops.”<sup>6, 7</sup> This regulatory charge places a burden on prison industries that takes into account the political and economic pressures of outside industry on the market for Federal Prison Industries. Strangely, while one might expect this charge to result in FPI operating in a slew of industries with very low market share, the reality appears to be that FPI concentrates a large degree of its work in certain small industries specialized in federal procurement. While these fields may be somewhat insulated from claims of unfair competition (generally because they are not profitable for domestic producers and only cater to government markets), FPI maintains significant market share in these industries. In some cases, prison industries’ large market share has led to allegations that FPI is skirting public standards for workplace safety or environmental hazards that lowers the real costs of doing business by offsetting these damages onto the bodies of its prison laborers.<sup>8</sup>

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<sup>6</sup> Act of June 23, 1934, 18 U.S.C. §§ 744i-n (1934).

<sup>7</sup> (Pierson, Price, & Coleman, 2014), 21.

<sup>8</sup> Grossman, E. (2005) “Toxic Recycling.” *The Nation*. November 21, 2005.



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