

SELECTED REFERENCES

INDUSTRIAL RELATIONS SECTION

PRINCETON UNIVERSITY

No. 284*

Princeton, NJ 08544

October 1997

CONVICT LABOR: DOMESTIC ASPECTS**

Cowen, Jonathan M. "One nation's 'gulag' is another nation's 'factory within a fence': prison-labor in the People's Republic of China and the United States of America." *UCLA Pacific Basin Law Journal*, Fall, 1993. pp. 190-236.

Cowen compares the federal prison-labor laws of the United States and China. Both nations have laws requiring prisoners to work and both are in accord with the United Nations Standard Minimum Rules for the Treatment of Prisoners, which also encourage member states to require prisoners to work. Both countries permit some prisoner-made goods to be sold on the private market, although in America these sales are allowed only if the prison workers are paid market wages. Reviewing statistics concerning prison labor in both countries, Cowen concludes that the most obvious difference between Chinese and American prison labor is one of scale, with the PRC having a much larger prison population, a greater percentage of prisoner-made goods on the open market, and a greater volume of prison-made exports. The author believes that the most significant difference is the substandard conditions in Chinese prisons, though he also notes the problems of overcrowding and inmate violence in American prisons.

Dwyer, Diane C. and Roger B. McNally. "Public policy, prison industries, and business: an equitable balance for the 1990's." *Federal Probation* (Administrative Office of the U.S. Courts, Washington, D.C. 20544), June, 1993. pp. 30-36. Free.

The authors support the use of prison industries to offset the rising costs of incarceration for the growing prison population in the United States. Dwyer and McNally present four contemporary organizational models for work programs. In the traditional governmental-use model, the products of prison industries are sold only to state and local governments. In the joint-venture model, prison industries contract with private sector businesses that use convict labor. In the corporate model, the prison industry is a relatively freestanding, semi-independent organization, with the correctional agency limiting itself to providing security and training. In the free-enterprise model, the prison industry is a totally freestanding, profit-making organization that uses inmate labor to meet specific needs. Minimum or market wages are paid to the inmate who is typically charged for room, board, and possibly restitution. An example of the free-enterprise model is the telephone reservation center operated by Best Western International inside the Arizona Correctional Institute for Women. According to the authors, the benefits of private sector prison enterprises include: 1) reallocation of tax dollars currently spent on prisons, 2) increased opportunity for U.S. companies to recapture business lost to foreign markets, 3) enhancing

* Prepared by Linda Oppenheim, Social Science Reference Librarian.

** Items on this list should be ordered directly from the publisher. Addresses are given in connection with each reference.

inmate work skills thereby increasing their employability upon release, and 4) creating a less violent and more manageable prison population. A similar argument is presented by Kathleen Maguire and Timothy J. Flanagan in their article "A full employment policy for prisons in the United States: some arguments, estimates, and implications," (*Journal of Criminal Justice*, v.21, no. 2, 1993. pp. 117-130.)

Haslam, James K. "Prison labor under state direction: Do inmates have the right to FLSA coverage and minimum wage?" *Brigham Young University Law Review*, no. 2, 1994. pp. 369-398.

Prior to 1983, the federal courts did not accept prisoner claims to rights as employees under the Fair Labor and Standards Act (FLSA). After that year, some courts began to apply a new test, established in *Bonnette v. California Health & Welfare Agency*, to determine the "economic reality" of the inmate-worker situation. The criteria were whether the employer 1) had the power to hire and fire the employees, 2) supervised and controlled employee work schedules or conditions of employment, 3) determined the rate and method of payment, and 4) maintained employment records. Several courts now seem to recognize that prisoners may have a right to FLSA coverage when they are employed in the service of private businesses and sometimes when they work for the prison or the state. Parts III and IV analyze *Hale v. Arizona I*, *Hale v. Arizona II*, and *Vanskike v. Peters*, three recent opinions which consider arguments for and against extending FLSA coverage to prisoners. In the negative decisions, court decided that the *Bonnette* factors did not determine the existence of an employee-employer relationship in a non-free labor situation. Halsam proposes a new test to determine the economic reality of employer-employee relations that requires workers to be free to sell their services and expect compensation.

Marks, Denton and Aidan Vining. "Prison labor markets: the supply issue." *Policy Sciences*, July, 1986. pp. 83-111.

How will the prison labor supply respond to work programs and the expectation that prison industry work will lower recidivism? According to Marks and Vining prisoners' incentives to work are limited by the socioeconomic and attitudinal characteristics of the prison labor force. The prison population reflects a disproportionate incidence of characteristics that signal discouragement and difficulty in the labor market; it is disproportionately nonwhite, young, uneducated, lacking an employment history, and involved in drug and alcohol use. The authors surmise that this population also tends to attribute success to external forces rather than to one's own effort and initiative. Work incentive is also weakened by the nature of prison economy that both guarantees an annual income and restricts the consumption value of additional income. The authors suggest that short-term inmates will tend to be the ones most motivated to work and that employment opportunities should probably be oriented toward them.

Perspectives on inmate work programs; 1990 programs handbook. Lanham, MD 20706. American Correctional Association (4380 Forbes Blvd.). 1990. 27 pp. o.p.

The handbook outlines the basics of prison labor programs in the context of general prison planning and vocational and general education. The authors highlight the TIE concept—Training Industry Education—that was implemented in Nebraska correctional institutions and which links industries and education. Typically, the pre-employment program is one to two weeks in length, with additional time for specialized areas. Classroom instruction and shop or laboratory work include orientation, safety, measurement, and mathematics modules. Inmates enrolled must have a GED or be enrolled in a GED program.

Pilcher, Dan. *State correctional industries: choosing goals, accepting tradeoffs*. Denver, CO 80202. National Conference of State Legislatures (1560 Broadway, Suite 700). 1989. 13 pp. o.p.

The purpose of this paper is to help state legislators answer policy questions regarding correctional industries. The author summarizes the history of correctional industries from English jails and workhouses to Chief Justice Warren Burger's promotion of prison industries as "factories within fences." Pilcher discusses both the institutional and inmate objectives for work programs and advises policymakers to specify the priority objectives for their state, particularly if the private sector is involved. He describes an example of performance evaluations of state correctional industries carried out by the New York Legislative Commission on Expenditure Review in early 1988.

Prison labor: Are we heading back to the future? Washington, D.C. 20006. Public Employee Department, AFL-CIO (815 Sixteenth St., N.W., Suite 308). 1997. 12 pp. Free.

According to the AFL-CIO, many existing private and public sector prison industries programs do not prepare inmates to return to the community and also allow for abuses (physical punishment, less than minimum wage, refusal to work resulting in lost credit for "good time," etc.). The union advocates both vocational training and obtaining a high school degree as the best protection against recidivism. As an illustration of labor-supported prison work programs, the paper describes The South Central Iowa Federation of Labor, AFL-CIO Labor Institute for Workforce Development, and the Iowa Department of Corrections Prison Industries Division project designed to train prisoners in skills they can use upon release to secure meaningful employment. The project established registered apprenticeship programs in three Iowa correctional facilities in the areas of machine tooling, printing, and graphic design. Upon release, the union will help place ex-convicts certified through the program with outside employers.

Schlossman, Steven L. and Joseph Spillane. *Bright hopes, dim realities: vocational innovation in American correctional education*. Santa Monica, CA 90407-2138. Rand (Distributive Services, P.O. Box 2138). 1992. 55 pp. (N-3454-NCRVE/UCB). \$7.50.

This paper provides a historical perspective on correctional education in American and its implications for reform in the 1990s. Among the authors' conclusions are the following: 1) Vocational education in prisons has been cast as an inflexible substitute for remunerative prison labor, rather than an adjunct or modification of it. 2) The historical pattern seems to be that the effective, productive utilization of inmates' vocational skills prompts the creation of key constituencies especially among legislators and corrections administrators who care more about the products and their remunerative value than about the integrity of the training program itself. 3) Conflicts among correctional educators and therapists have undermined efforts to make correctional education the driving force in prison reform.

Sexton, George E. *Work in American prisons: joint ventures with the private sector*. Rockville, MD 20849-6000. National Criminal Justice Reference Service, Box 6000. 1995. 14 pp. (Program Focus). Free.

This paper describes the successful partnerships companies in South Carolina, California, and Connecticut formed with state and local correctional agencies. Among the benefits of these collaborations is the retention of jobs in the United States that would have gone to offshore labor markets. Sexton quotes an executive who said that the "Made in the U.S.A." label on their products

influenced purchasing agents in two organizations to buy from them rather than his offshore competitor. The author quotes from a 1991 statement by the AFL-CIO Executive Council on Prison Labor Programs criticizing prison industries that provide unfair competition and take jobs from the general population. The AFL-CIO statement supports prison labor programs that produce goods and services used exclusively for the government, pay the prevailing wage for similar work in the private sector, with appropriate deductions, prohibit the use of prison labor to replace strikers or provide services that would prolong a strike, and prohibit the displacement of existing jobs in the private sector.

U.S. General Accounting Office. *Improved prison work programs will benefit correctional institutions and inmates*. Washington, DC 20548. GAO, P.O. Box 37050. June 29, 1982. 9 pp. (GAO/GGD-82-37). Free.

Federal inmates are employed in two types of work programs: 1) institutional work programs, which include housekeeping, food services, and day-to-day maintenance, and 2) industrial work programs, operated by Federal Prison Industries, Inc., which produce products for sale to Federal agencies. The GAO found that the typical institutional job does little to enhance inmate work skills. Many more inmates than necessary are assigned these jobs, resulting in shortened work schedules, make-work projects, and continued idleness. On the other hand, industry work programs which provide inmates with relevant work experience and help reduce prison costs are sometimes short of workers. For prisoners to be reassigned from the institutional to the industry work program, the Bureau of Prisons needs system-wide criteria to determine the number of workers needed for day-to-day tasks, an adjusted administrative personnel ceiling to provide a sufficient number of supervisors, acceptable levels of competition for prison industry products to avoid conflict with private businesses, and improved quality of prison work experience. The document includes several appendices including figures for federal prison industry sales.

Zonn, Sidney. "Inmate unions: an appraisal of prisoner rights and labor implications." *University of Miami Law Review*, v. 32, no. 3, 1978. pp. 613-635.

The author discusses decisions concerning prisoners' rights. Among the new freedoms sought in the 1960's was the right to organize through an inmate union. The unions tried to achieve both correctional reform and progress in traditional labor issues: higher wages, better working conditions, and recognition as a collective bargaining agent. The advocates for prisoners' unions see these organizations as tools for the presentation of legitimate inmate grievances. Opponents of unions see them as contradictory to the traditional view of punishment for crime and as opportunities for possible corruption with the concentration of power in the hands of a few inmates. When prison officials in North Carolina prohibited inmates from soliciting for a prisoners' union, barred union meetings, and refused to deliver packets of union publications for redistribution among prisoners, the union brought action in the U.S. district court, which decided in favor of the union. On appeal, the Supreme Court reversed the lower court's decision. Justice Rehnquist, writing for the majority stated that the guarantee of first amendment associational rights must yield to the reasonable considerations of correctional management in the prison system. Chief Justice Burger, in his concurring opinion, noted that the decision addressed only the constitutional right of such an organization to exist in a prison society. Justices Marshall and Brennan in their dissent noted the fear of a prison reform organization the decision expressed and the step backward it made in the area of prisoners' rights.