

# **The Economics of Inmate Labor Force Participation**

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## Chapter 2

Presentation by Ray Marshall

*Preliminary Opinion on the Economics of Inmate Labor Force Participation*

### Biography

Ray Marshall is Professor Emeritus and Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the Lyndon B. Johnson School of Public Affairs of the University of Texas at Austin. Professor Marshall served four years as U.S. Secretary of Labor in the Carter Administration.

Professor Marshall has a Ph.D. in economics from the University of California at Berkeley. A member of the University of Texas faculty since 1962, he came to the LBJ School in 1981. He is a founder and member of the board of the Economic Policy Institute. He is a member of the Clinton Administration's Commission on the Future of Worker-Management Relations, co-chair of the Commission on the Skills of the American Workforce, chair of the board of the National Center on Education and the Economy, and past President of the International Labor Rights Fund.

Professor Marshall has authored more than thirty books and monographs, including *Thinking for a Living*, *Education and the Wealth of Nations*, *Losing Direction*, and *Families, Human Resources, and Economic Development*.

Professor Marshall retired from teaching at the LBJ School in August, 1998.

### Presentation

#### Introduction

This paper addresses the following priority questions on the economics of inmate labor force participation (ILFP) presented in the guidelines for this project:

1. Are bans on ILFP good or bad for the economy in terms of impact on the GDP?
2. What effect will the expansion of ILFP have on civilian unemployment?

3. What are the key steps in improving the economic contributions of the inmate labor force?
4. What non-economic (e.g., criminal justice, correctional or other) effects should be addressed regarding ILFP?

My responses to these questions are:

1) The overall effects of ILFP on the economy and the work force are likely to be relatively small and therefore less important, at least in the short run, than an examination of the effects of the expansion of ILFP on particularly affected groups: the inmates, their families and victims; workers, unions and companies in industries most heavily impacted by ILFP; the criminal justice system; and the general public. I have been asked to pay particular attention to the views of organized labor on ILFP.

2) The appropriate standard for assessing the impact of ILFP on the economy and particular groups should be the social benefits and costs of particular measures taken to expand ILFP. In other words, the appropriate policy question should be to seek a set of policies that will expand or contract ILFP while achieving specified public policy options and minimizing adverse effects for free labor markets. Expanding GDP is not, by itself, likely to be a significant policy objective; ILFP is, however, likely to influence human resource development objectives for disadvantaged workers.

3) As a labor economist primarily concerned with public policy, my approach will be to outline measures that might advance the public welfare by addressing the legitimate concerns of different parties without yielding to the illegitimate. Even though I have done very little work on the ILFP issue, I have done extensive work on labor markets—both as an academic researcher and as a designer and administrator of interventions to address particular problems. The approach that I have found useful in such work is to examine an issue from a variety of perspectives—theoretical, historical, quantitative and behavioral. Policy work also tends to be interdisciplinary. I do not think, for example, that we can or should separate purely economic analyses from criminal justice considerations since crime, incarceration and recidivism are serious economic, criminal justice, and human development problems. A good orienting hypothesis is that the present criminal justice and corrections system in the United States is not very efficient and does too little to rehabilitate offenders and prevent crime. The system apparently has interrelated, self-perpetuating components which make it difficult to change. It also seems that the American system is very different from its counterparts in other countries.<sup>1</sup> (Indeed, this subject could benefit greatly from comparative adaptive learning.) We therefore should attempt to develop policies that will help transform the criminal justice system and make it more effectively deter crime, rehabilitate and punish criminals, and reintegrate ex-offenders into society. Such policies would greatly reduce the enormous and growing human and economic costs of crime and incarceration.

4) As noted below, I do not have sufficient evidence to make adequate policy recommendations. My analyses, conclusions and recommendations are therefore based on very preliminary assessments of the evidence and designed more to stimulate discussion than to be serious policy proposals.

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<sup>1</sup> See, for example, Elliott Currie, *Crime and Punishment in America* (NY: Henry Holt & Co., 1999).

I will first give more complete answers to the first two questions and then devote most of my remarks to the last two. I start with a brief historical overview and then proceed to an analysis of some limited evidence on the pros and cons of expanding the industrial (i.e., non-institutional) employment of inmates. The evidence, preliminary as it is, suggests that an expansion of ILFP could be in the legitimate interests of all the parties and therefore in the public interest. My main caveat is that expansion should be done through a constellation of policies to transform the present criminal justice system while improving the conditions of all of the parties, except perhaps the illegitimate interests of those who benefit from present arrangements.

The first question is whether bans on ILFP are good or bad for the economy. As noted, the short answer to that question is that the bans on inmate labor have very little impact on GDP because prison industry output (\$1.6 billion in 1997) is a very small fraction of the GDP (over \$8 trillion). Moreover, the total prison labor force (611,000 in 1997)<sup>2</sup> is small relative to the civilian labor force of 136 million.

Critics of ILFP are concerned less about the absolute numbers of prison inmates working than they are the trends and the impacts on particular industries, places and groups. The number of federal prison inmates has increased from 66,000 in 1990 to 113,000 in 1997; the number of state inmates increased from 708,000 to 1,132,000 during those years.<sup>3</sup> There have been similar increases in the size of the inmate work force, though non-institutional work opportunities have not kept pace with rising inmate populations, so industrial work forces constitute a smaller percentage of the prison populations than they did ten years ago. At the federal level, where a larger proportion of inmates are employed, 33 percent of inmates were employed in 1988 but only 18 percent were employed in 1996.<sup>4</sup>

In addition to the trends, critics of ILFP are concerned that prisoners will be exploited and that low paid inmates will undercut free labor wages and working conditions. If they are paid at all, inmate workers generally earn less than \$1 per hour. The range in the five-step federal industrial pay scale is from \$0.23 to \$1.15 per hour.<sup>5</sup> Unions have long been concerned about the negative impact of convict labor on free workers' wages and working conditions, as well as the adverse affects of prison labor on workers' ability to organize and bargain collectively. It therefore is not surprising that the prohibitions on the employment of convicts in competition with free workers coincided with the growth of unions in the nineteenth century and during the 1930s. Before these

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<sup>2</sup> Of these, 498,000 were involved in support work in their institutions, 75,000 were assigned to traditional prison industries producing goods and services mainly for state and federal agencies, and only 2,429 were employed in state and local prisons by private firms producing goods and services for open markets (Rod Miller, Mary Shillon, and Tom Petersik, "Inmate Labor in America's Correctional Facilities," Discussion Draft, Preliminary report to the ABA's Subcommittee on Correctional Industries, April 1998.)

<sup>3</sup> *Prisoners in 1997*, Bureau of Justice Statistics Bulletin, August 1998.

<sup>4</sup> Hearings, House Subcommittee on Crime, September 18, 1996.

<sup>5</sup> In 1991 prison workers in non-industrial activities earned between \$0.12 and \$0.40 per hour; most (55%) earn \$0.12 while 5% earn \$0.40. ("Implications of the FLSA for Inmates, Corrections Institutions, Private Industry and Labor," Statement of Lynn H. Gibson before the U.S. Senate Hearings of the Committee on Labor and Human Resources, October 18, 1993, p. 18).

restrictions were imposed, it was not uncommon for convicts to be used to break strikes. Indeed, unions still complain about the use of inmate labor to weaken strikes, prevent unionization, and undercut wages.

In order to understand the nature and probable impact of relaxing the restrictions on the industrial employment of inmates, it is useful to review the history of convict labor, examine the circumstances that caused these restrictions, and to analyze some experiences with the employment of prison labor. It also is helpful to examine the arguments advanced by various interested actors. Such an examination reveals the nature of the evidence (as well as the political alignments) for and against relaxing the restrictions on the employment of inmates.

### Historical Overview

Early in American history, prisoners were assigned to hard work of various kinds, which was considered necessary to punish inmates for their crimes and to purge them of the evils that led to their criminality. In addition, work always has been considered an effective way to control prisoners.

In order to reduce the public costs of incarceration, various methods evolved to employ convicts in the production of goods and services to be sold in the public or private sectors. The first of these was the public-account system whereby governments sold the products of prison labor on the open market. The second was the state-use system, which prevails today, where inmates produce goods and services to be sold to or used by government agencies. The third was the contract system, making a comeback since federal enabling legislation in 1979, where the state sells prison labor to private firms. And the fourth was the lease system which vests in private companies the responsibility for the custody, care, discipline, and employment of inmates. Before the 1930s, the contract system predominated in the North and the lease system in the South.<sup>6</sup>

During the nineteenth century, reformers, businesses and unions successfully restricted the contract labor system. Union opposition moderated when contract bidding caused wage differentials between convicts and free workers to converge, but intensified when these differentials widened. Unions also naturally opposed the use of convicts as strikebreakers.

During the first half of the nineteenth century, campaigns against contract labor were particularly vigorous in states like New York where unions were strong. Unions became stronger throughout the United States after national and federal labor organizations were created in the last half of the nineteenth century. Unions gained wider public support for their campaigns against contract labor during the recessions of the 1870s and 1890s. The compromise worked out to settle the differences between the proponents and opponents of the commercialization of prison labor was the state-use system.

The convict lease system was eliminated gradually in the South by the 1930s, mainly because it had become uneconomical but also because of public outcries following well-publicized exposes of appalling working conditions and often corrupt relationships between prison businesses, politicians, prosecutors and courts. The system

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<sup>6</sup> Stephen P. Garvey, "Freeing Prisoners' Labor," *Stanford Law Review*, January 1998.

became unprofitable when employers bid up convict costs to approximate those of free workers.<sup>7</sup> As in the North, Southern states replaced the lease system with state-use policies, thus shifting the control and employment of convict labor from the private to the public sector. In the North, convicts worked behind walls in the state-use system, while in the South chain gangs and state farms predominated. However, by the 1940s, well publicized abuses and the increase in the proportion of white prisoners, especially during the Great Depression, caused chain gangs to virtually disappear, although they are making a comeback in some places.<sup>8</sup>

### Federal Policies

During and after the Great Depression the federal government adopted a number of measures to curtail the use of inmate labor in competition with free workers. The Hawes-Cooper Act of 1929 subjected the interstate shipment of prison-made goods to the restrictions on their sale in intrastate commerce previously imposed by many states. The 1935 Ashurst-Sumners Act added federal enforcement to Hawes-Cooper and made it a federal crime to knowingly export prison-made goods into a state that prohibited the sale of such goods. In 1940, Congress amended Ashurst-Sumners to make it a federal crime to transport and sell prison-made goods regardless of the provisions of state law. These laws greatly restricted the industrial employment of inmates. Garvey reports that “In 1885, 90% of the prison population worked. In 1997, the figure was only 6.2%.”<sup>9</sup> The failure of the state use system to provide more meaningful industrial employment to inmates is attributed to a number of factors, including mediocre management, poor legislative oversight, and the failure of state agencies to honor requirements that state agencies purchase prison-made goods. However, all of these problems appear to be related to the absence of effective competition for prison industries.

At the federal level prison labor is organized by Federal Prison Industries, Inc. (FPI—often referred to by its trade name, UNICOR), a nonprofit corporation created in 1934. In 1997 FPI operated 97 different factories in 46 locations but employed less than 20 percent of the federal prison population. FPI produces products to be sold exclusively to federal agencies. In 1996, 38 percent of FPI’s sales were in the furniture industry and 22 percent were in textiles and apparel.<sup>10</sup> Despite a requirement that federal agencies give preference to UNICOR products, FPI accounts for less than 2 percent of federal procurement.

In 1979 Congress passed the Prison Industry Enhancement (PIE) Act which allows certified private companies to employ state and local prison labor and to sell prison-made goods in interstate commerce, an action that some observers thought might restore the contract system. To be certified, a company must pay prevailing wages, demonstrate that inmates will not displace free workers, consult with unions, and make deductions from inmates’ compensation (not to exceed 80% of gross wages) for room

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<sup>7</sup> Ibid., p. 364.

<sup>8</sup> Ibid., p. 366.

<sup>9</sup> Ibid., p. 370.

<sup>10</sup> Hearings, House Subcommittee on Crime, September 18, 1996, p. 17.

and board, taxes, family support and contributions to victim compensation funds. Between the end of 1979 and June 15, 1995, about 1,600 PIE inmates had gross earnings of over \$44 million, \$23.6 million of which was deducted for victims' programs (\$3.6 million), costs of incarceration (\$10.5 million), family support (\$3.4 million), and taxes (\$6.1 million).

The 1994 Crime Bill largely deregulated prison industry and freed inmate labor from most federal restrictions, thus opening the sale of prison products to any private market. However, according to one prison labor expert, PIE's growth is restricted by the prevailing wage requirement, which does not permit companies to compensate for the additional costs of doing business in prisons (e.g., additional security costs); he concludes that "Few industries will find it worthwhile to set up shop behind prison walls if they are forced to pay inmates the prevailing wage—unless, of course, the state offers a subsidy to offset these higher costs."<sup>11</sup>

#### Arguments For and Against Removing the Restrictions on Inmate Labor

PIE and FPI supporters argue that these programs' safeguards prevent them from undercutting free labor wages and working conditions or from unfairly competing with private sector companies.<sup>12</sup> Critics, on the other hand, argue that UNICOR routinely violates PIE's prevailing wage and business protection requirements, rendering those safeguards largely ineffective.<sup>13</sup> Business representatives argue, in addition, that FPI's mandatory sourcing requirement gives UNICOR an unfair competitive advantage.

Unions: At the present time unions believe that inmates should work, but generally oppose the expansion of the sale of convict-made products in competition with private industry or the employment of convicts in competition with free workers.

The AFL-CIO has protested inmate working conditions as well as the threat expanded ILFP would pose to free workers. In 1997, for example, the federation's Executive Council adopted a resolution protesting "the widespread use of prison labor in the U.S. in unfair competition with free labor and...ask[ed] that a complaint be filed with the International Labor Organization charging that the U.S. has violated ILO convention No. 105, which prohibits the use of forced or prison labor for economic development."<sup>14</sup> Consistent with Samuel Gompers' declaration that organized labor wanted "more constant work and less crime, more justice and less revenge," national and state AFL-CIO affiliates encourage "the training of prisoners both to help in their rehabilitation and to reduce recidivism after their release. But, always with this caveat:

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<sup>11</sup> Ibid., p. 373.

<sup>12</sup> See Robert Grieser, "Do Correctional Industries Adversely Impact the Private Sector?" *Federal Probation*, March 1989, pp. 18-24.

<sup>13</sup> See House hearing, op cit. and Senate Committee on Labor and Human Resources, October 28, 1993.

<sup>14</sup> AFL-CIO Public Employee Department, *Issues and Answers*, March 1997.

Prison labor never should be used to compete with free labor nor to replace it.”<sup>15</sup> An AFL-CIO background paper specifically endorsed training programs like the South Central Iowa AFL-CIO’s apprenticeship partnership with the Iowa Department of Correction Prison Industries Division (discussed below), but noted that most prison training did not adequately prepare inmates for skilled work, partly because of an overemphasis on work at the expense of training. Union leaders have protested the use of prison labor to displace public as well as private employees and note that “From Alabama to New York, the old-fashioned chain or work gang is making a comeback.”<sup>16</sup> In addition, the AFL-CIO contends that “Prison security has been compromised to accommodate the shipping needs of private operators.”<sup>17</sup> Texas AFL-CIO president Joe Gunn alleges that “one high tech firm, American Microelectronics...closed its Austin facilities and laid off 150 employees to move its operation behind bars” in a private prison at Lockhart, Texas where “convicts end up with about 84 cents an hour for their work.”<sup>18</sup>

The AFL-CIO charged that PRIDE, a non-profit consortium of private companies in Florida (discussed below) “has the sole contract with Florida corrections for all work performed by prisoners in the state. In 1996...Inmates received from 15-50 cents an hour for their work, with no minimum wage protection and no workers’ compensation.”

John Zalusky of the AFL-CIO’s economic research department told the U.S. Senate Labor and Human Resources Committee that it was “wrong for state-owned prisons to create or support businesses paying convicts substandard wages to take jobs from free labor who have committed no crime...” The AFL-CIO agreed that inmates “should be working and should not be idle, and that the work they do should impart values that are useful to the free world. However, we believe that working at exploitive wages sends exactly the wrong message and bestows the wrong values. It says that hard work is unrewarding and that Government is an oppressor.”<sup>19</sup> Finally, “The AFL-CIO supports the self-use concept of prison labor with effective business and labor input in the decision process to ensure minimal adverse impact on free labor.”<sup>20</sup>

Of course, neither employers or unions take a uniform approach to the expansion of prison industries. Most unions oppose the sale of prison-made goods in open markets and the use of convict labor in competition with free workers. However, unions are more concerned about the wages and conditions of convict labor than they are about the fact that convicts are required to work, which they generally support. Moreover, unionized prison guards favor work by prison inmates because of its demonstrated effectiveness in improving prison safety, behavior and morale. Overcrowded prisons where inmates have nothing but idleness and boredom to occupy their time create dangerous and explosive situations for guards and inmates alike.

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<sup>15</sup> AFL-CIO Public Employee Department, *Prison Labor: Are We Heading Back to the Future?* February 1997, p. 1.

<sup>16</sup> *Ibid.*, p. 7.

<sup>17</sup> *Ibid.*, p. 8.

<sup>18</sup> *Ibid.*, p. 9.

<sup>19</sup> Senate hearing, *op cit.*, p. 31.

<sup>20</sup> *Ibid.*, p. 32.

Businesses: While business organizations like the U.S. Chamber of Commerce oppose the expansion of the sale of prison-made goods in open markets, some companies favor present arrangements because they profit from the use of inmate labor or sell supplies and materials to prison industries.

Industry critics of the FPI program argue that UNICOR's failure to honor the program's safeguards against unfair competition damages private businesses. Moreover, these critics argue, the mandatory sourcing requirement causes UNICOR to be a monopoly which produces poor quality products and service at inflated prices. For example, Michael Gale, Director of Government Relations for the Apparel Manufacturers Association alleged:

UNICOR steals jobs from...hardworking law-abiding, tax-paying citizens... We estimate that over the years, 7,000 private sector apparel workers have lost their jobs because of UNICOR's continued and unchecked expansion of apparel manufacturing... The [Defense Personnel Supply Command (DPSC)] estimates that it pays, on average, 15% more than the lowest private sector bid on almost 100% of what it buys from UNICOR... [I]n fiscal year 1995, UNICOR was delinquent in 46% of its contracts with DPSC. In... 1996 UNICOR was delinquent in 36% of its contracts. For both years the private sector was delinquent in only 9% of its contracts."<sup>21</sup>

Gale reported that a 1991 "Deloitte and Touche study indicates that UNICOR receives poor quality ratings from its customers."<sup>22</sup>

There are similar complaints about state prison industry products. According to a 1994 *Forbes* article on the California Prison Industry Authority (PIA), state agencies are required to give [PIA] first crack at supplying goods, regardless of price or quality...

A private furniture manufacturer offered to deliver...chairs [to California State Polytechnic University] within six weeks for \$54 apiece. But Cal Poly was obliged to buy [PIA's] chairs for \$92 each. Eight months after the orders were placed, 54 of the 213 chairs have yet to be delivered...

"[PIA's] cost is always higher [than private suppliers]," fumes Jerry Schroeder, a Cal. Dept. of Motor Vehicles purchasing officer. "Not sometimes—always."<sup>23</sup>

Inmate Advocates: Other critics allege that during the 1980s and '90s a combination of "get tough on criminals" policies and the expansion of industrial employment has led to the exploitation of inmates, who are powerless to protect themselves except through litigation, which is expensive, time consuming and uncertain. "Get tough" policies have contributed greatly to a prison population explosion, sharply increasing prison costs (a commonly cited figure is \$20,000-\$25,000 annual cost per prisoner), thus exerting great pressure to expand ILFP as a way to offset part of the added cost. These developments also enable corrections institutions to charge prisoners for court costs, the compensation

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<sup>21</sup> House hearing, op cit., pp. 102, 106.

<sup>22</sup> Ibid., p. 116.

<sup>23</sup> Nina Munk, *Forbes*, August 29, 1984, p. 82.



of victims, room and board, and medical care. These charges put great pressure on inmates to work but also limit their net compensation. As noted earlier, the AFL-CIO contends that the pressures to work limit the education and training needed for rehabilitation.

Industrial work by prisoners is voluntary, but inmates allege that a refusal to work often leads to abuse by prison officials. Moreover, all able-bodied prisoners are required to work, but are compensated much better for industrial than for institutional employment. These conditions cause some, especially the AFL-CIO, to believe that the United States is vulnerable to the charge that our prison labor policies are in violation of ILO Convention 105 on forced labor.<sup>24</sup>

### Arguments For and Against Relaxing Restrictions

Those who favor relaxing the restrictions on the employment of inmates make a number of arguments:

- 1) The expansion of paid employment would benefit inmates, their families, their victims, corrections institutions and the general public.
- 2) Under present arrangements, inmates and their families suffer because they are locked into self-perpetuating cycles of poverty and crime. According to one assessment, "...there are seven million children with a parent in jail or prison or recently released on probation or parole."<sup>25</sup> Having a parent behind bars, according to this report, puts children in much greater risk of a life of delinquency and crime. Indeed, this link is so strong that half of all juveniles in custody have a parent or close relative who has been in jail or prison. And 40 percent of the 1.8 million adult inmates have a parent or sibling behind bars.<sup>26</sup> Expanding paid employment, proponents argue, would provide marketable skills for inmates, income for them and their families, reduce recidivism and thus do much to break these self-generating and intergenerational cycles of poverty.

Perhaps the best evidence on the relationship between prison industries work and recidivism is from the Federal Bureau of Prisons' Post-Release Employment Project (PREP), a seven-year research and evaluation study published in 1991 and updated in 1996. This study compared inmates who worked in prison industries with those with similar backgrounds who did not participate in FPI work or receive vocational training. This study found that relative to releasees who were not involved in prison industries while incarcerated, FPI inmates demonstrated better institutional adjustment while in prison, were less likely to recidivate, had higher earnings and were more likely to be employed. The 1996 update tracked the same inmates for up to 12 years after release

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<sup>24</sup> See Daniel Burton-Rose, Dan Pens, and Paul Wright (eds.), *The Ceiling of America* (Monroe, ME: Common Courage Press, 1998); Christian Parenti, "Pay Now, Pay Later: States Impose Prison Peonage," *Progressive*, July 1996; Idem, "Making Prison Pay: Business Funds the Cheapest Labor of All," *Nation*, January 29, 1996; Idem, "Inside Jobs," *New Statesman and Society*, November 3, 1995

<sup>25</sup> Fox Butterfield, "As Inmate Population Grows, So Does a Focus on Children," *New York Times*, April 7, 1999, p. A-1.

<sup>26</sup> *Ibid.*

“and concluded that FPI inmates had a 20% greater chance of obtaining employment, earning higher salaries upon release...and remaining crime free.”<sup>27</sup>

In their 1997 study of PREP enrollees, William Saylor and Gerald Gaes found that participants had a recidivism rate of 6.6% compared with an overall federal inmate rate of 20% and 10.1% for a comparison group.<sup>28</sup>

Less controlled evidence on the relationship between recidivism and state prison industries employment comes from the Enterprise Prison Institute (EPI), “a private research and education organization focused on the management of our prison and criminal justice systems.”<sup>29</sup> EPI summarized general data from a number of states, including PRIDE, which compared 2,068 inmates who had worked for PRIDE for six months or more (between 1990 and 1994) before their release in 1995 with state prisoners who did not work for PRIDE. Two years after their release 11% of the PRIDE participants had returned to prison compared with 27% for non-PRIDE releasees.

According to a 1998 PRIDE report, “of the 560 ex-offenders who had worked for PRIDE for six months or more in fiscal year 1995, seventy-one or 12.7% recommitted within a two-year period.”<sup>30</sup> This compared with a Florida inmate recidivism rate of 18.8% for FY 1994-95, the most recent year for which data are available. There has, however, been no attempt to compare PRIDE enrollees with similar non-enrollee inmates. Such a comparison would provide a better assessment of PRIDE’s impact.

A somewhat more controlled study of Ohio Prison Industries (OPI) compared 744 releasees in 1992 who had worked for OPI at least 90 days with 7,839 non-OPI releasees who met the basic requirements for participation in OPI. Overall, the OPI participants recidivated 18 percent less—24.6% compared with 29.9% for non-OPI inmates. The skilled OPI releasees had a recidivism rate of 15%, about half that of the control group. Blacks with OPI experience recidivated at 26.8 percent compared with 36.5% for non-OPI blacks, a much greater impact than the comparable rates for whites, which were 22.3% and 23.1%.<sup>31</sup>

3) More paid work would enable prisoners to make restitution for their crimes. Once incarcerated, offenders have no way to make restitution or to support themselves or their families. As former Chief Justice Warren Burger put it: “To put people behind walls and bars and do little or nothing to change them is to win a battle but lose the war. It is wrong. It is expensive. It is stupid.”<sup>32</sup>

4) More private sector work might do much to improve the culture of correction institutions by relieving the tensions created by boredom and idleness, instilling a work ethic in prisoners, and helping defray the high and rising costs of incarceration.

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<sup>27</sup> Letter from Steve Schwab, Assistant Director, Federal Bureau of Prisons, to J. Michael Quinlan, May 12, 1997.

<sup>28</sup> “Training Inmates,” *Corrections Management Quarterly* 1, no. 2, 1997, pp. 32-43.

<sup>29</sup> Statement of Knut A. Rostad, President of EPI, Hearing, Subcommittee on Crime, U.S. House of Representatives, Committee on the Judiciary, September 18, 1996, pp. 43-50.

<sup>30</sup> <http://peol.com/Annual%20Report/1998Highlights.htm>

<sup>31</sup> *Ibid.*

<sup>32</sup> “Sullivan’s Sermon: Responsibility,” *Washington Post*, March 13, 1991.

Moreover, subjecting prison industries to the discipline of competitive markets might greatly improve the efficiency of prison industry and, depending on competitive strategies, the value of the training inmates receive. Market discipline might do much to change the prison culture, which many experts consider more to train inmates to be criminals than to rehabilitate them. According to this view, prison bureaucracies are self-perpetuating institutions concerned mainly with incarceration, not rehabilitation. It is conceivable that greater private employment, with proper safeguards, could cause prisons to be more concerned with better classifications and groupings of inmates. There can be little doubt that removing mandatory sourcing requirements and subjecting prison industries to competition would cause them to become less complacent and more efficient.

### What Kinds of Policies Might Accomplish These Outcomes?

Removing or offsetting unjustified competitive advantages and disadvantages between free market and prison industries also might facilitate expansion of industrial employment by reducing opposition to ILFP expansion. It is not clear what would be required to achieve this objective. For example, many, including Vice President Gore's National Performance Review, recommend eliminating the mandatory sourcing requirement for FPI. By contrast, FPI officials argue that eliminating mandatory sourcing would destroy prison industries which, they argue, must have this requirement in order to attract private partners and offset the economic disadvantages they suffer because of prison security conditions and the low quality of prison labor.

However, conceivably prison industries could compensate for these disadvantages by deductions from inmates' earnings, as is done now, and by using public revenues for education, training and other services to inmates. Because of the social returns to human capital formation, it is in the national interest to remove the financial barriers to education and training for all workers in and out of prison. These human capital services might, in effect, be subsidies to prison industry, as well as investments in the rehabilitation of inmates.

Competition also might be improved by requiring prison industries to observe the same labor standards—including the right to unionize—as their private sector competitors.

Some insight into the efficacy of procedures to balance compensation between inmates and free workers might be found in the U.S. experience with adverse effect wage rates (AEWR) for temporary foreign workers and prevailing wages for government contractors. The basic purpose of the AEWR is to prevent the employment of foreign workers from depressing domestic working conditions. Similarly, prevailing wage laws are supposed to prevent governments from using their economic power to depress labor standards. The application of prevailing and minimum wage requirements to prison industry could require these industries to compete by becoming more efficient rather than through lower labor standards. Some argue that prison industries cannot compete if they have to pay prevailing wages (from which prison officials could make deductions), but there is evidence from the PIE program that at least some private companies can compete

while paying prevailing wages, though how much PIE companies evade this requirement is not clear.

Another area that should be explored is the application of anti-discrimination policies and concepts to ex-offenders. These policies, like other labor standards, are justified as needed to cause labor market decisions to be based on productivity and merit instead of race, gender, age or other factors. This is a complex, controversial and important subject which would require careful study and debate, but we have a wealth of experience with anti-discrimination policies in other areas. To be useful for policy, a theory of discrimination should define discrimination and assess its impact on various actors, as well as explain why it occurs and how it changes.<sup>33</sup> There can be little doubt that ex-offenders have employment problems related to a combination of discrimination and legitimate labor market factors, which would have to be sorted out. An effective rehabilitation program would include measures to overcome human capital (education, training, health and motivation) disadvantages. It could be that anti-discrimination measures would cause human capital programs to be more effective.

Lessons from anti-discrimination policies in other areas that might be useful in developing such policies for ex-offenders include:

- 1) A careful understanding of the nature, meaning and relative importance of economic discrimination (ED). Some basic principles are applicable in all cases:
  - a) ED is caused by a combination of status and economic advantage for the discriminators; status, because people discriminated against have identifiable characteristics which cause victims to be considered inferior by discriminators..
  - b) ED varies in intensity between different groups of victims.
  - c) ED is difficult to identify and measure because it is part of a complex constellation of factors that cause victims to be disadvantaged.
  - d) It is important to distinguish institutionalized forms of discrimination from specific overt acts that can be proved in courts or administrative processes. Different policies are required to counteract institutional and overt ED.
  - e) Discrimination is an action while prejudice is an attitude, which may or may not lead to discrimination depending upon the power relationships between actors. Through cognitive dissonance in economic relationships, attitudes are more likely to flow from actions than actions are from attitudes.

There seems to be little doubt that some ED stems from misperceptions about the corrigibility of ex-offenders. These misperceptions might be overcome by better classifications of inmates based on profiles of the degrees of risk, public information campaigns and demonstrations of successful rehabilitation. Anti-discrimination demonstrations might start with private prison industry and government contractors, as was the case with race, gender and other forms of ED. There is little doubt in my mind that discrimination against ex-offenders is a barrier to their rehabilitation and reintegration into society or that the elimination of such discrimination would be in the

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<sup>33</sup> Ray Marshall, "The Economics of Racial Discrimination: A Survey," *Journal of Economic Literature* 12, No. 3, September 1974; Ray Marshall, "Civil Rights and Social Equity: Beyond Neoclassical Theory," in *New Directions in Civil Rights Studies*, Armstead L. Robinson and Patricia Sullivan (eds.) (Charlottesville, Va.: University Press of Virginia, 1991), pp. 149-174.

public interest. But I would need more information than I have to assess the importance of discrimination relative to human capital factors and to specify how an ex-offender anti-discrimination policy might work. The clearest and least controversial case would be to outlaw discrimination by private prison industries and government contractors. Some incentives (competitive advantage) might be given to non-discriminatory employers.

The unionization of inmates might have several advantages. For one thing, an effective alternative dispute resolution process could reduce the cost of litigation by inmates, which some consider mainly trivial and very expensive for the states.<sup>34</sup> Unions also could become advocates for inmates within the prisons and perhaps accelerate prison reform. There is little doubt that prisoners need effective alternatives to the courts, which are expensive, uncertain and time consuming. Unions also could strengthen the enforcement of existing laws, supplementing the limited enforcement resources available to federal agencies. My limited investigations for this paper found numerous allegations of evasion of labor and private industry protections by prison industries.

Unions could, in addition, help with the rehabilitation process by providing skill development, especially through apprenticeship training, which would improve inmate earnings while in prison and after their release. Prototype programs have been created in Iowa and other places. Training in registered apprentice programs provide geographic and occupational mobility, as well as higher wages and the efficient acquisition of skills.

A system that permitted private industry to bid for the right to operate prison industries could increase efficiency and provide more paid jobs for inmates. Special attention might be given to targeting industries most likely to migrate out of the United States. An independent board representative of all stakeholders could accept bids from a variety of organizations, including those that already operate prison industries. The bid notices could specify the conditions necessary to protect and promote the interests of inmates, businesses, prison functions and the public. Along with the usual business qualifications, bid specifications should include labor standards, security requirements and other matters to facilitate inmate rehabilitation. For example, because education and training are so important to rehabilitation, special preference might be given to companies that provide effective training and post-release placement and support services for inmates. A prototype for at least some components of this activity could be the PRIDE Enterprises, a nonprofit conglomerate of private sector businesses created by the Florida legislature in 1981 to reduce the cost of state government and to achieve rehabilitative goals by “duplicating as nearly as possible the operating activities of a free-enterprise type of profit-making enterprise.” In FY 1998 PRIDE’s sales were \$81.2 million and it employed 4,890 inmates for 4,321,548 hours.<sup>35</sup> PRIDE also provides structured on-the-job training and education benefits, as well as post-release job placement, education assistance and support (over half of PRIDE’s inmate workers are placed “directly to the community and available for work”).<sup>36</sup>

<sup>34</sup> See statement by Senator Harry Reid, FLSA Hearing, p. 2. According to Sen. Reid, 40% of civil litigation in Nevada federal courts is by prisoners (p. 4).

<sup>35</sup> <http://peol.com/annual%20Report/1998Highlights.htm>.

<sup>36</sup> Letter to Michael Quinlan from T.J. Mann, Manager, PRIDE Inmate Training and Support, June 13, 1997.

A more detailed formal evaluation might show whether or not PRIDE is a suitable model for replication. While PRIDE apparently has some strong features, it is not clear that workers' interests are adequately protected, as suggested by the AFL-CIO's complaints noted earlier. It is equally questionable that a state-created monopoly is the most effective way to manage prison industries. With appropriate safeguards, a more competitive model might greatly improve education, training and inmate rehabilitation. Such a system also might provide greater incentives for inmates to improve their job skills and earnings.

2) More balanced competition is necessary but not sufficient to make significant improvements in prisons and the development of opportunities for inmates and their families. Rewards for the acquisition of work skills and knowledge as well as work performance could be a valuable component of a more effective rehabilitation system. Although there are unlikely to be enough industrial jobs for all inmates, an expanded work program could facilitate better classification and separation of workers (in terms of their probability for successful rehabilitation) from those who need closer supervision. Grouping inmates might create better peer pressure for successful work careers rather than for criminal activities.

A careful analysis of recidivism in Texas and elsewhere demonstrates that "since recidivism is caused by a complex constellation of factors it is unlikely that any single factor intervention strategy would be successful."<sup>37</sup> While employment is necessary for the successful reintegration of ex-offenders, it is not sufficient; other factors include counseling, education and training, drug treatment, and post-release support and placement services. Since an estimated three-fourths of inmates are considered to be functionally illiterate,<sup>38</sup> education is a much better way to occupy inmates' time than the make work and idleness that is characteristic of many prisons.<sup>39</sup> The labor standards for prison industries, including institutional occupations performed by inmates, could therefore ensure a proper balance between work, education, and rehabilitative counseling.

There is strong evidence that marginal low-wage work alone will not do much to improve the earnings of inmates or anyone else.<sup>40</sup> Real improvements depend on the acquisition of a strong work ethic and marketable skills. The best skill development programs are those like registered apprenticeships that combine the simultaneous development of standards-based knowledge with manual skills. Such a program for inmates has been developed by the Iowa Department of Corrections Prison Industries Division and the South Central Iowa Federation of Labor, AFL-CIO's Labor Institute for Economic Development. This is a registered apprenticeship program in established prison

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<sup>37</sup> Susan Marshall, "Reintegration of Ex-Offenders: The Role of Employment and Other Factors," Ph.D. dissertation, Brandeis University, 1992, p. i.

<sup>38</sup> See statement from the National Governors' Association, "A National Strategy on the Prison Crowding Problem," HR-16, n.d.

<sup>39</sup> See T.J. Flanagan and K. Maguire, "A Full Employment Policy for Prisons in the U.S.: Some Arguments, Estimates and Implications," *Journal of Criminal Justice* 21, pp. 117-130, 1993.

<sup>40</sup> See Garth Mangum, "A Thirty-Five Year Perspective on Workforce Development Programs," in Ray Marshall (ed.), *Back to Shared Prosperity: The Growing Inequality of Wealth and Income in America* (Armonk, NY: M.E. Sharpe, forthcoming).

industries in three of Iowa's correctional facilities. The first three programs were in machine tooling, printing and graphic design. The union takes responsibility for placing successful graduates through its hiring hall. According to South Central Iowa's AFL-CIO president, "It's our duty and our job to represent [prison inmate apprentices] in the job market."<sup>41</sup> Debate on the issue at union meetings transformed rejection of ex-offenders to acceptance of fellow union members who have successfully served apprenticeships highly valued by union members.

A number of states have developed what appear to be effective job training programs for inmates. In 1993, for example, Oklahoma had 570 inmates enrolled in skill training classes. The Oklahoma program is different from those of most states in that it is operated by the Oklahoma Department of Vocational and Technical Education instead of the Department of Corrections. All instructors and administrators are employed by the state vo-tech department. It would be interesting to examine Oklahoma's experiences in depth to determine whether or not a non-corrections education and training staff could be more effective, or how much it might affect the traditional prison culture. According to a 1993 report, the Oklahoma program, initiated by a state senator in 1970, had been beneficial to both the corrections and vo-tech departments. The most significant benefit of this arrangement was to ensure the "program's focus on education. Programs operated by corrections officials often tend to be measured in terms of their ability to address idleness, security issues and the institutions' maintenance needs."<sup>42</sup> The Oklahoma arrangement also has greatly enhanced student-teacher bonding and provides inmates access to state-of-the-art equipment that legislators often are unwilling to provide to corrections institutions. Their commitment to their program was sufficiently strong that student inmates protected the training facility during a riot in one of Oklahoma's prisons.

Students who enroll in the program receive an occupational plan for training in a variety of trades and occupations lasting from 18 to 32 weeks. Job placement is a major problem in the reintegration of ex-offenders into society. Oklahoma finds placement to be a challenge, but provides job placement specialists to help inmates who complete the program. It was reported in 1993 that 70 percent of all minimum security graduates are placed within 90 days of their release. Reviews in Maryland, Oklahoma and Illinois have found that inmates' performance in vo-tech programs is comparable to that of similar non-inmate students and that inmates who complete these programs recidivate at lower rates than other students.<sup>43</sup> In 1999, Oklahoma's vo-tech department operated three registered apprenticeship programs (meat processing, welding and food services). In April 1999, the department's acting director told me that they had no trouble placing certified apprentice graduate releasees.

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<sup>41</sup> Rostad, op cit., p. 50.

<sup>42</sup> Tom Freedman, "Corrections/Vo-Tech Partnership Offers Maximum Training Benefits," *Corrections Today*, July 1993, p. 123.

<sup>43</sup> Ibid.

## Conclusions

With this background, I can provide tentative answers to the questions posed for this project:

1. I believe the recommendations I have made could permit the expansion of ILFP to be good for most stakeholders. The main losers would be those companies that cannot, or do not wish to, compete on a level playing field. It remains to be seen, of course, whether private companies will be willing to hire inmates under the conditions I propose. However, I believe it possible to adjust prison programs and the inmate wage deduction system to make prison labor attractive to good employers, especially if employers, along with unions and other stakeholders, are involved in negotiating the actual terms of employment. And provided further that tight labor markets and the targeting of appropriate prison industries create incentives for companies to use inmate labor while protecting low wage workers in the private sector from surges in supplies of prison-made products. Inmates, their families and victims, and prison systems would all benefit from expanded paid employment. Unions could be major beneficiaries if they are given a larger role and are able to make themselves attractive to inmate workers. An expansion of employment is unlikely to be large enough to offset the high cost of incarceration, but it could greatly improve rehabilitation and free up resources for other prison activities. The reduced recidivism rate might moderate the rise in prison populations, but alternatives to incarceration for non-violent offenders also could relieve the pressures on prisons. Above all, these changes might make better use of prisoners' time for work, education, and training than the debilitating and dangerous idleness which seems to be the norm now.

2. I believe the key steps in improving the economic contribution of the inmate labor force are: expand paid employment within the framework of balanced competition and protective labor standards, strengthen employment and training, and promote the more effective reintegration of ex-offenders into the work force. In order to sell these recommendations to the public and to policy makers, we need to collect better evidence about what works and why in each of these processes. This could be done by more detailed research, followed by carefully designed pilot projects.

### Panel Remarks

In addition to his presentation, Ray Marshall also provided comment to panelists, extending the detail of his views on inmate labor force participation. A fuller sense of his views includes understanding both the remarks and questions of the panelists and his responses to panelists. His full responses, minimally edited, to the following panelists on the following issues can be found below in the chapter presenting the panel:

Panelist	Response Subjects
Harry Holzer	Minimum Wages and Wage Setting Labor Union and Labor Representation
Linda Haithcox	Inmate Participation in Deliberations



	Role of Mediation
Wendell Primus	Role of Measurement and Rewards International Labor Standards for Voluntary Labor
Steve Schwalb	Effects on Prison Culture Choosing Appropriate Prison Industries
Brenda Smith	Understanding Employment Effects on Female Inmates
Charles Sullivan	Education and Skill Development (Two part response, including to moderator's follow-up question) Computers and Technology Skills Building
Greg Woodhead	Unionization Publicly Funded Inmate Jobs