

An Economist Looks at US Prison Labor Reform

(January, 2020)

“My narrow economist’ conclusion is that current US prison labor policy is inefficient; my fuller human conclusion is that it is also genocide.”

“The primary economic argument for totally excluding all US jail and prison inmates from civilian jobs is unfair competition to civilian labor and business:

- ***Inmate labor will drive down civilian wage rates;***
- ***Inmate labor will take civilian jobs; and***
- ***Inmates do not deserve civilian jobs.***

All these arguments fail fundamental economic tests and instead exhibit classic discrimination, well recognized as harmful to the economy, employment, and business expansion, and especially harmful to the discriminated communities.”

“We Americans need to face the horror of our US policy barring inmates from all jobholding. We are creating ghettos for prisoners, their families, and their communities. Rooted in racism, we are especially targeting the poor and vulnerable. And in permitting no exceptions and allowing no income, our discrimination against incarcerated workers is intrinsically far worse than discrimination against racial minorities and women. We are violating basic human rights, approaching genocide, by denying inmates and their children and families access to means necessary for their contemporary survival.”

“The side of a prison wall is irrelevant to rules of economic efficiency and performance. A person’s “best legal employment” outside prison is the identical “best legal employment” into which corrections and society should position that person while incarcerated (or anywhere in the criminal justice system).”

Prison Labor Reform, propelling America’s incarcerated adults into successful legal employment and financial responsibility, is the single most powerful, cost-effective (profitable and revenue creating), and widely rewarding economic growth - and poverty and inequality reduction - policy available to the United States today, and when understood, widely acceptable, to both the left and the

right, to business and labor, to human rights, to policy makers, and to the general public.”

“Although ‘prison labor’ sounds like any work performed by prisoners, a better perception is ‘work performed by prisoners under rules exempting them and the firms engaging them from normal labor protections, rights, and wages.’

‘Employment’ may be the same work performed by the same prisoners, but under civilian labor force protections, rights, wages, and firm obligations.

Hence, ‘prison labor’ and ‘employment’ are distinguished by the rules governing the incarcerated workers and not by the fact of incarceration.”

Tom Petersik

1. Introduction:

This is a personal economics exposition whose core is the (\$) GDP consequences of current US prison labor policy excluding all US inmates from employment in the civilian economy. The content here highlights my views and not the fuller relevant literature, although my intent is to eventually incorporate critical material other than my own. I'll add material and welcome comment as I can.¹

It concludes that current US prison labor policy fails fundamental tests of economic efficiency, thereby - in stark contrast to popular opinion - slowing US economic growth, including slowing business and jobs expansion, and at the same time unmasking US inmate exclusion as textbook discrimination, especially damaging to the poor and marginalized.

The examination concludes recommending that, to maximize GDP, incarcerated persons be mainstreamed without difference into the normal civilian economy, covered by exactly the same laws, regulations, institutions, and obligations as other employees, and integrated seamlessly into the labor forces of normal, taxpaying civilian US firms, including into the bargaining units of unionized firms, educated and trained to their best legal occupations via the same institutions as others. In effect and over time, traditional prison industries should end.

Further, this core exposition ultimately expands from incarceration alone to address legal employment opportunity all across the entire criminal justice system. Always accounting for the primacy of safety, expelling persons from their best legal occupations should be minimized altogether, from arrest through post-release, ending the whole array of wrenching employed persons from jobs, disbarments, job disenfranchisements and barriers, and expulsions. By extension, this same argument also questions the wisdom of our contemporary penchant for terminating prominent legal careers, such as for Mike Tyson Inc. or Bernie Madoff's successful legal operations. It also by extension questions the wisdom of total expulsions of

¹ Correspondence Policy: Views of others and correspondence are welcomed via e-mail at _____. For the time being, I will decide which gets added to this missive for wider access, but my hope is to welcome thoughtfully put views and appropriate revisions.

fallen luminaries like Matt Lauer, Harvey Weinstein, Roger Ailes, and a growing list of others. At a minimum this broader application serves to remind us that our preference for firing and disbaring “captains of industry” malefactors comes at a notable cost of slowing economic growth and exacting penalties on the economy far beyond the offender (particularly for innocent employees of the firm, its suppliers and customers, and denying deserving victims restitution and compensation), perhaps suggesting we find less socially costly than “scorched earth” paths of economic punishment well outside criminal justice sanctions.

In addition this exposition, over time and as resources allow, intends to more fully address –

- **Human Rights, including of Children:** Fully consistent with competitive economics, this exposition explicitly addresses the issue of basic human right of access to the means of survival, concluding that the present complete expulsion of incarcerated persons from job access (US inmate median annual income \$0, average for working inmates less than \$1000 a year) approaches the broader bounds of genocide and constitutes a severe violation of basic human rights for offenders, their families, and communities. Remembering that there are more unsupported minor children of US inmates than inmates, statistically the exclusion of inmates from the civilian labor force is primarily a *child* human rights and poverty issue, for whom parental incarceration ranks as one of ten primary correlates of child trauma.² [Elaine Waxman of Urban Institute – Food stamp person, on TV talks about incarceration]
- **Public Policy Benefits:** Removing discrimination provides a fully market-based and widely politically attractive impetus to employment of among the poorest and most-difficult-to-reach subpopulations, reaching less educated and experienced males, single female householders, senior householders with minor children, minorities, the homeless, the mentally ill, and others, thereby raising incomes and lowering taxpayer health and welfare burdens, increasing tax revenues, and thereby increasing resources

² See “stopabusecampaign.org,” 10 correlates of child trauma, “Adverse Childhood Experiences” (ACE).

for defense, health, education, infrastructure, and other priorities at the federal, state, and local levels.

- **Losers:** While integrating offenders seamlessly into the productive legal economy will benefit virtually every segment of society, including corrections and correctional industries, there will be losers, namely all those persons and entities tied to the mast of preserving traditional prison industries and their suppliers (and some customers). Careers and livelihoods dependent upon traditional prison industries are clearly endangered. In addition, as a practical matter, changing inmate employment to normal participation becomes much more politically difficult for all the well-known reasons: traditional prison industries both have the most to lose *and are the socially empowered protectors, gatekeepers, and politically connected current representatives of inmate work for whom changing from protected monopsony to the competitive marketplace is the most fraught.*

2. Background Summary Facts³:

Approximately 2.3 million adults, 92% male, occupy US jails and prisons on any given day. Nearly 50% were legally employed at time of arrest. Hundreds of thousands held responsible professional or trade positions before incarceration. However, only a fraction of 1% hold civilian jobs in work release, such that virtually 100% of US inmates today are excluded from civilian employment and Fair Labor Standards Act (FLSA) protections. About 60 percent of all US inmates have no “prison labor” assignment whatsoever, hence \$0.00 annual income, and for the remaining 40% in institutional maintenance or traditional prison industries, their average *annual incomes* appear less than the weekly income of the median American employee, and without any employee benefits.⁴ During incarceration, inmates are considered voluntarily unemployed and out of the civilian labor force, meaning that child support arrearages accumulate plus interest compounding for

³In general, relevant data are difficult to obtain, fragmented, inconsistently defined and measured, and representing different times. Data in this exposition reflect my understanding and should not be considered necessarily accurate. The reader is encouraged to independently obtain data, and I welcome insight and corrections.

⁴Legally, prison laborers are not employees and are not paid, but receive “gifts” or “gratuities” of the state.

child support, fines, and other charges. About 50% of US incarcerants have unsupported minor children, such that there are more unsupported minor children of US inmates (estimated 2.5 million) than inmates. However, in contrast to most families, rather than the working-age parent supporting children, for America's inmates, therefore, resources flow in reverse, from children and households to dependent incarcerated adults.

3. Current Law, Custom, and Social Deliverables – All That's Wrong Today

Perhaps the first best thing to learn about the US Constitution and primary Federal prison labor law is that both are largely irrelevant for day-to-day Federal, state, and local prison labor practices, which are driven almost entirely by a culture of discrimination and facilitated by prison industry's monopsony (exclusive) buyer relationship with the captive labor force.

Purportedly the United States' Constitution, Federal, state, and local laws, and regulations underlie contemporary exclusion of incarcerated American adults from employment in the civilian labor force, the two major being -

1. **The US Constitution, 13th Amendment, slavery exception clause:**
“Neither slavery nor involuntary servitude, *except as punishment for crime whereof the party shall have been duly convicted* [italics mine] shall exist within the United States...”
2. **Ashurst-Sumners Act of 1935 (Title 18 USC 1761(c))**, making transport of prisoner-made goods in interstate commerce a Federal criminal offense:...”Whoever knowingly transports in interstate commerce ...any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners...shall be fined under this title or imprisoned for not more than two years, or both.”

However, in fact neither prevents a willing nation from accommodating inmate employment should we choose to do so.

Constitution: First, contrary to convoluted popular impression, the 13th amendment slavery exception permitting *forced* work, has nothing whatsoever to

do with the issue here of US practices universally *denying* opportunities for work. As noted in *Watson v Graves*, 1990, the United States Court of Appeals, fifth circuit, states, "...a prisoner who is not sentenced to hard labor retains his thirteenth amendment rights..." which therefore means that the overwhelming majority of persons incarcerated today are rarely even subject to involuntary servitude. The vast majority of departments of corrections explicitly define prison industry participation as voluntary, not involuntary. Therefore, for all practical purposes, the 13th amendment exception is of little substantive value in assessing inmate labor and labor force exclusion as exercised today.

Federal Law: Similarly, although the Federal title 18 USC prohibition has been wielded to completely bar all US inmates from employment in the civilian economy, in fact Title 18 remains porous in allowing US incarcerated persons to be employed in the civilian economy *should the public and policy makers choose:*

- Services jobs not prohibited: The Federal title 18 prohibition applies only to *goods* production and not to services, and today service employment accounts for about 80% of US jobs. And in correctional circles, "services" is expansively interpreted to include virtually all rebuilt and refurbished goods.
- Work Release Allowed: Inmates on work release today are employed in civilian jobs outside the walls, in both goods and services production.
- PIE Allowed: Although not defined as "employment," incarcerated persons engaged in the Federally authorized "Prison Industry Enhancement" (PIE) program, a specific exception to the Title 18 prohibition, may work under defined conditions and be paid prevailing wages in interstate goods production.
- Court Rulings Allow Inmates civilian jobholding: Although somewhat confusing, court cases in which inmates lent out to work for private firms but paid prison wages have sued and successfully won FLSA coverage. Courts have ruled that when work performed by an incarcerated person for a private firm fits the "four FLSA factors of economic reality," namely, (1) the incarcerated person is hired (chosen) or dismissed by a civilian firm, (2) conditions of performance are set by that civilian firm, (3) pay is provided

by the firm, and (4) a series of records is maintained by that firm, then the reality is that the incarcerated person is, in fact, an employee covered by the Fair Labor Standards Act. See again, in particular, *Watson v Graves* (1990), which in turn cites other decisions such as “...we emphatically hold that the fact that [Carter] is a prison inmate does not foreclose his being considered an employee for purposes of the minimum wage provisions of FLSA...the category of prison inmate is not one of the groups Congress expressly excluded from coverage by FLSA.” And, “...we must apply the four factors of the economic realities test to the facts...in light of the policies behind FLSA.”

- Finally, then, from these court cases comes the key distinction between “prison labor” and “FLSA employment.” The distinction between prison labor and employment is not – as we might initially assume – that the worker is a prisoner (He or she is a prisoner in both cases), but instead a distinction between the rules of governance of that labor, in “employment” including labor services performed by an inmate meeting FLSA conditions, and prison labor including labor services provided under conditions failing the economic realities tests, such as “hiring” and “firing.” Terms, and assignments, pay, and records are maintained by departments of corrections. *Rather than seeing “prison labor” as a characteristic of prisoners, instead both “prison labor” and “employment” involve separate sets of malleable policy rules and customs under which a prisoner’s labor is performed.*

In sum, then, my conclusion is that there are virtually no Federal law limits on inmate participation in the civilian labor force in the production and interstate commerce of virtually all goods and services, so long as any goods production meets the FLSA four economic factors test – and not incidentally, are essentially therefore “fair competition.”

I do not address individual state or local laws and regulations.

The “Real” Foundations of Inmate Exclusion:

Culture – primarily a culture of discrimination, and next monopsony – are the true factors underlying prison labor as known today, resulting in nearly 100% exclusion of incarcerated persons from the US civilian labor force.

As the United States begins its second decade of the 21st century, we exclude almost 100% of incarcerated persons from participating in the legal civilian labor force because we first inherit and accept discrimination to exclude prisoners and then we leave the vacuum in work opportunity to be filled by prison industry monopsony as the exclusive user of incarcerated labor.

Discrimination:

The first fact that we must confront is that we discriminate against incarcerated workers because that is what we have always done to disfavored subpopulations, part of the “economic racism” inflicted on the poor, the vulnerable, and the disliked. We clothe ourselves in patent fictions and feel justified them. Nothing more. In my opinion regarding current US prison labor practices, we choose to believe good that does not exist and collectively ignore harm that is real.

Discrimination: Economists define “discrimination” as the refusal to hire or use a productive resource despite its being economically productive and, as Nobel economist Gary Becker clarifies, we willingly forfeit a more materially productive economy in order to enjoy the nonpecuniary benefits of discriminating. Reaching a few decades back into the 20th century, one might recall declining to hire a minority professional (say, Jackie Robinson) because of the distaste of consumers (fans) or coworkers in having that person alongside, despite prodigious talent. Said otherwise, discrimination occurs when the dollar value of the economic production of the resource is less important than the psychic cost of having the resource involved. We don’t like some people and find the \$ value of their skills insufficient to overcome the dislike.

And overcoming discrimination is, we find, extraordinarily difficult to achieve. First of all, we inherit discrimination mostly unnoticed and unquestioned. Second, should we notice, we encounter a seeming solid array of bogus but dearly held objections, the universally and classically familiar being “they aren’t any

good and aren't qualified," "they will take our jobs or drive down our wage rates," "they don't deserve the jobs," or other barrier – sometimes including supposed divine ordination. But the time and effort to articulate, research, and debunk such discriminations is almost always extensive, costly, and socially unwelcome. Third, discrimination is in itself a somewhat self-fulfilling prophecy, reinforced by institutions, unfavorable economics, and social customs; education is denied, banks do not loan, and the discriminated group is likely not well known, not socially connected, and "different," not like "us." And finally, separating oneself from discriminating beliefs and behavior has proven in itself difficult and alienating, with the few enlightened individuals being perceived as ignorant, out-of-step, dangerous, recriminating, and unwelcome. Changing the balance ordinarily proves long and perilous, and changing perceptions from revulsion to notice, then to wary testing, to welcome is usually long and costly in coming.

In my view, discrimination is the primary key to contemporary policies excluding the incarcerated work force from the civilian labor force. We've inherited the practice and built beliefs, viewpoints and interpretations (or lack of data), institutions, and policies to reinforce, justify, and extend what we've always done. And in the case of the incarcerated work force, we specifically heap on the powerless incarcerated worker what are really our failings and those of public policymakers, prisons, and prison labor in clearly unfair competition of prison labor with civilian business and labor.

Discrimination Approaching Genocide:

The term "genocide" strictly only applies to four specifically defined groups -national, ethnical, racial or religious - among whom US inmates are not. Nevertheless, the *conditions* to which US inmates, their families, and communities are subjected very closely match genocide.

Genocide described: The United Nations Convention on the Prevention and Punishment of the Crime Genocide, Article II, states, "...genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group

There are two required strict components of genocide, one mental (intent) and one physical:

To constitute genocide, there must be a proven intent on the part of perpetrators to physically destroy defined group; cultural destruction does not suffice, nor does an intention to simply disperse a group.

Importantly, the victims of genocide are deliberately targeted - not randomly – because of their real or perceived membership of one of the four groups protected under the Convention. This means that the target of destruction must be the group, inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Relationship of genocide to US inmates, their children, families, and communities, with respect to inmate labor force participation:

Taking as a matter of statistical fact that almost no US adult inmates are members of the US civilian labor force or are employed in jobs covered by the FLSA as a result of deliberately enforced over decades, US laws, policies, culture, and customs all act directly to yield conditions consistent with genocide, “...inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” The deliberate feature stands all the more clearly when one reflects upon the stated justification for preventing inmates from holding jobs because they will take employment from deserving civilians and that incarcerated persons (and by extension their dependents and communities) do not deserve jobs.

While I do not agree with those who see narrow “racism” against persons of color as the driving force of this much-lowered status of inmates and their families etc., I do see “economic racism” rampant in this arena, in that the poor and

marginalized of any race (about 50% of US inmates are classified as “white”) are considered unworthy of even the minimal attention of labor force participation rights.

Further, it is well worth noticing that conditions “b” physical and mental harm, and “d,” forcibly removing children and giving them to another group are both especially relevant to the children of female US inmates with children.

Monopsony:

Once discrimination has segregated the incarcerated labor force from the economy, the vacuum in work opportunity for prison laborers is filled as it is today by the economic sister of monopoly (single seller), that is, monopsony (single buyer), here the traditional prison and prison industry as sole buyer.

Economists and history have long shown that when there is only one purchaser, the terms of trade are set by the buyer, and the terms of trade themselves will be the more or less favorable to one party or the other depending upon the relative market power and the range of difference of that power, between seller and buyer. The misfortunes for inmate labor sellers include having no other buyer, the prison and prison industry being fully able to repel competing buyers, making the conditions of availability to competitors unpalatable, indifference and actual dislike by the surrounding community (who believes in varying degrees in slavery as fit punishment), and the overwhelming control over the labor force in its basic life behaviors, including board, room, safety, mobility, contact, care and conditions – all enforced 24/7 with walls and weapons. Applying to the all-controlling monopsonist buyer Alfred Marshall’s dictum about monopolists, “The monopolist’s greatest reward is the leisure life,” further means that prison industry buyers of inmate labor will, inevitably, operate the prison industry system inefficiently and for their own comfort. Anyone expecting prison industries to operate efficiently or to maximize inmate opportunity, income, and welfare under conditions of monopsony, ignores the clear evidence of human behavior. It will be very difficult under current circumstances to expect

contemporary prison industries to operate efficiently or for inmates' benefit, especially absent significant incentives to managers of prison industries.

When monopsony reigns in the presence of a powerful buyer and powerless seller, the wage outcome is a forgone conclusion.

Social Deliverables -Security First, Last, and Always:

So long as the job of the most junior correctional employee, also that of the chain of command, from the prison industries director, the warden, the director of corrections, then the Secretary of Public Safety, and finally the elected governor – all are held by voters to the maintenance of security above all else in corrections - then security will be delivered at the expense of all else, including rehabilitation, human rights, and employment of incarcerated workers. Therefore, in corrections today, any possible threat to security is dismissed out of hand.

Debunking Inmates as an Unqualified Labor Force:

Almost 50% of those incarcerated today were legally and productively employed in the normal economy at time of arrest, and the incarcerated subpopulation, while markedly less educated and skilled than the overall civilian labor force, nevertheless includes hundreds of thousands of well-educated and highly productive persons whose crimes were (usually) independent of their labor force qualifications. The purported harm inmates pose – driving down wage rates, for example - instead is an artifact of public policy decisions under which they are excluded from normal labor protections and then abandoned to just one employer, US correctional industries.

Conclusion:

Under any rational economic scrutiny, the prevailing arguments for excluding incarcerated workers from the US civilian labor force and protections repeat in even more severe fashion the classic economically harmful tropes of discrimination long ago debunked and set aside – to the benefit of the entire economy as well as the discriminated groups – for African-Americans and other racial minorities, women, the disabled, the elderly, and other US workers, but still continuing in

even more severe fashion for the incarcerated subpopulation and their families. Whereas under segregation, minorities at least enjoyed place on lower economic ladders, had reserved sway in some professions (eg, railway porters), and could climb professional ladders within their own communities (doctors, lawyers, undertakers, educators, clergy), such that at least honorably if humble livelihoods could be and were achieved, while incarcerated workers are entirely walled off from all access to any means of family support.

4. The “Two Minute Primer on Competitive Economics, Theory and History”

The first objection to welcoming the incarcerated subpopulation to the US civilian labor force is that their participation will drive down the economy and take civilian jobs.

But...

Bedrock western economic theory and observed/documentated 20th century US history convincingly show exactly the opposite of arguments commonly flaunted in barring US inmates from employment: *barring* inmates from the civilian labor force drives down the economy, while welcoming them spurs economic growth, including business and civilian hiring expansion.

- The central tenet of western competitive economics is that every resource be used (employed). Not using (unemployment) by definition reduces a nation's output of goods and services and reduces national well-being.
- In addition, not only should every productive resource be used, each should be used to its highest (most valued) production.
- Further, via “multiplier effects,” unemployment triggers successive unemployment, by reduced consumer purchasing (demand reduction) cascading into wider layoffs. The observed fact is that employment spurs additional jobs and that layoffs trigger additional unemployment.

In sum, barring a subpopulation denies the broader society the goods and services the subpopulation could have produced (supply effects) and at the same time removes the purchasing power that employed subpopulation could have exercised, thereby reducing or preventing business expansion and additional jobs available to the majority population as well (demand effects). Even with the minimal multiplier of “2,” direct losses in jobs and consumption get doubled under current policies.

Practical exercises:

- Do other local businesses prosper when a large local employer closes?
- If employing inmates “drives down the economy,” then why does having employed those persons before prison (50% were employed), or after release *not* drive down the economy?
- The language used today to exclude inmates repeats language used to bar African Americans and women in the 20th century. Did their acceptance drive down the economy? What would happen to the US economy if the discriminations in place in, say, 1920, were to return today?

Seeing “Unfair Competition” With Clearer Eyes

The second major objection to inmate labor force participation is that inmate labor is unfair competition to civilian labor and business.

There is truth to the argument. An inmate working in prison industries annually obtains less than the weekly average income of a civilian, and gets no benefits. Prison industries operate on taxpayer provided land and buildings, pay no taxes, barely pay incarcerated workers, are granted preferred access to government markets, and are exempt from many employer obligations imposed on civilian businesses.

But wait. What we learn is that prison industries, not prison inmates, are unfair competitors. Prison inmates are the victims of prison industries, and prison industries are the instruments of our (citizen and public) social policies. Prison

laborers want the same opportunities as other labor, and we are the makers of the rules under which both civilians and incarcerated workers operate.

At its heart, unfairness and fairness both arise from public policies that we control. And the heart of promise lies in fairness, simply meaning *applying to incarcerated labor and incarcerated business (prison industries) exactly the same rules as for civilian business and labor. If the rules are the same, the competition is fair.*

5. The Good That Can Be

21st Century “Prison Labor,” Full Integration into Civilian Labor Force, Indistinct in Law and Regulation from Other Labor Rights, Protections, and Obligations.

Summary Scope: The exact net dollar damage to US GDP emanating from inmate exclusion from the civilian labor force, that is, expelling incarcerated persons from participating in the civilian economy, is unknown and subject to widely varying definitions, assumptions, and measures. Statistics are at the very best highly tentative. However, at least conceptually accounting for the GDP-reducing effects of --

- Productivity reductions among affected offspring of the incarcerated as a result of parental incarceration (succeeding generation effects);
- Productivity reductions from post-arrest and pre-conviction disruptions of persons who did spend time incarcerated (pretrial damages);
- Productivity reductions resulting during the time of incarceration;
- Productivity reductions from reduced education, training, and employment experience and advancement during criminal justice involvement;
- Productivity reductions post-incarceration from incarceration experiences plus post-release discriminations (post-release damages); and
- Multiplier effects downward on GDP - at least conceptually doubling any direct losses from the direct negative effects on inmate productivity and purchasing power.

On any given day approximately 2%, about 2.2 million, of US working-age males are incarcerated and held out of the US labor force, directly suggesting maybe a 1% (male + female) depressing effect on GDP assuming these persons could have been educated and trained in the same general proportions of other men and Then assuming a conservative multiplier of 2 (a doubling), suggests a roughly 2% overall decrease in US GDP as a direct result of current US labor force exclusions via incarceration, Finally, considering that 8-10 percent of all working –age men have been incarcerated at some point in their lives and take some reduction in productivity from those experiences, my personal “best guess” sufficient for serious reflection and policy changes, is that ***overall the United States likely suffers a 3-4% net loss in annual GDP from the direct and immediately indirect productivity costs of inmate exclusion from the labor force, both from immediate consequences for the person and family plus the consequent doubling from similar “multiplier” effects on other “civilian” labor, business, and the economy.***

Said otherwise, the US is hobbling along, in effect, as if it were shutting down the equivalent economies of, say, Minnesota and Wisconsin, leaving us limping forward on a 48 state economy.⁵

And the direct implications of these persons’ absence and underperformance are decreased GDP, reduced consumption and investment, stunted business and labor expansion, increased welfare, tax, and healthcare burdens, reduced retirement investment, reduced global competitiveness, coupled with increased poverty, inequality, homelessness, mental illness and health of the populace, all hitting especially hard women, children, the elderly, minorities, and the poor and struggling persons, families, and communities. Within the criminal justice system their absence tends to correlate with higher recidivism and crime, unpaid court costs and fines, and the legitimate restitution claims of crime victims

⁵ Statistics on the economic consequences of incarceration are notoriously difficult to obtain. However, one useful assessment is contained in *America’s Invisible Crisis, Men Without Work*, by Nicholas Eberstadt (2016, Templeton Press), chapter 9, “Criminality and the Decline of Work for American Men,” including estimates of 16 million felons and ex-felons, and 12 percent of all working age adult males having felony convictions. The November 14, 2019, edition of *The Economist* includes in “Why States are Rushing to Seal Tens of Millions of Old Criminal Records,” estimates of 70-100 million persons, 1 in 3 adults, as having a misdemeanor or felony record, and separately, \$78 billion lost from GDP (Note, with US GDP now over \$20 trillion a year, the Economist’ estimate of GDP loss is less than 1% of GDP while my “best guess” of 3-4% suggests \$300-\$400 billion, but almost certainly includes a much broader conceptual array of effects, not the least of which are multipliers.)

unmet. Fragile families of releasees, additionally burdened with unpaid fines, court costs, interest, child support arrearages, and restitution obligations, all too often find needed breadwinners disappeared and families fractured.

The Economists' Proposal: *Recognizing labor force exclusion overall as a counterproductive economic discriminatory rider grafted into the criminal justice system, the overall efficient (fair) and effective remedy is to strip legal employment restrictions from all phases of the criminal justice system and instead treat the legal employment and economic success of persons throughout the criminal justice system as a normal economic and social priority to be protected and nurtured for offenders just as for others - within the bounds permitted while protecting safety.* The impossible goal toward which we would work is that in which no criminal justice action would interfere in any way with economic efficiency. In theory at least, even the worst criminal offender would continue his or her civilian employment, including in management or ownership, as if no criminal offense whatsoever had occurred, to the degree permitted by safety.⁶

And as a critical corollary, all firms for which an incarcerated person is employed would be subject to normal civilian law and regulation such that traditional prison industries that we know today ultimately merge entirely into the competitive civilian taxpaying economy.

Notable features include –

Mainstreaming/Normalizing Inmate Employment: As a practical matter, therefore, this is a proposal that “prison industries” and “prison labor” disappear entirely in

⁶ At first the idea of continuing civilian employment sounds uncontroversial when keeping persons employed and financially responsible while in the criminal justice system, for example for the plumber or accountant or teacher or physician, who remains employed by day and “serving time” separately. And it certainly means removing professional disbarments in many many cases. But it becomes more controversial when the offenders are wealthy and the offenses notorious. Contriving examples, suppose Mike Tyson had been permitted to continue training and fighting while incarcerated, or that Bernie Madoff had been welcomed in continuing to lead and operate his separate legal enterprise. In each case tremendous benefits might have been obtained, as in Madoff eventually paying back many millions legitimately owed. But what then for the currently popular behavior of dismissing highly successful corporate heads and artists credibly accused of sexual harassment? Or boycotting criminally offensive firms? The argument presented here tends to argue for not impeding GDP enhancing behaviors to the extent that criminal behavior can be corralled while legal productivity continued.

favor of the normal economic and social priorities of maximally productive legal employment for firms in the normal civilian economy.

Critical features include –

- Keeping persons in the criminal justice system in their homes and communities as both economic and “justice” priorities. Rather than seeking opportunities to separate persons, it becomes a criminal justice priority to facilitate and nurture legal economic success and financial responsibility within the community. As a practical matter, for example, at least 50% of persons now incarcerated would instead be living and employed outside traditional prisons and in their own homes and communities, to the extent permitted by protecting safety. And where safety requires stronger containment, then locating correctional facilities near jobs, typically in or near cities, and designing facilities and correctional priorities to maximize employment in the community (work release), or where necessary, inside facilities that themselves are conducive in location, design, and operation to maximize productivity and employment.
- **Normalize Education:** The normal “civilian” opportunities for education and training for which otherwise qualified incarcerated persons would be eligible, financed in normal ways, provided by the same institutions (and in the same civilian locations) as for others.
- **Welcome Organized Labor:** Persons in the criminal justice system equivalently belong to bargaining units of unionized civilian firms both outside and inside the walls of correctional institutions, and organized labor is recognized as a partner in healthy corrections rather than opponent of incarcerated workers. Conceptually welcoming organized labor includes apprenticeship programs and some role in public oversight (This feature is silent on “prisoner unions” and refers only to employees facing their private or public-sector employers along with other bargaining unit members).

6. Background Information:

Gary Becker: 1998 Breakthrough in the Economics of Inmate Labor Force Participation.

In the course of doctoral research I encountered a series of scholarly works on discrimination, generally referring to race discrimination in the United States, including by Gary S. Becker of the University of Chicago, for which he received the Nobel prize in economics in 1992.

I began to see Becker's work on discrimination as insightful on the issue of US policies excluding inmates from the labor force. After much review I have since begun to see the incarcerated labor force separation as a classic example of discrimination, and Becker's work forms the core of my exposition since.

However, painfully aware of this insight not yielding any notable welcome – the call to higher GDP not being especially welcomed - I have much more recently come to appreciate perhaps Becker's appreciation for societal preferences willing to “enjoy” the status quo rather than endure the wrench of addressing the discrimination. Apparently the social psychic value of denying jobs to inmates (and their families) is currently greater than the perceived dollar loss in GDP (I attribute this net preference, again, to our social illusion of benefits (the pluses) coupled with our preferring to ignore costs (the minuses) yielding a perceived net social benefit).

As the years roll on I become all the more impressed with Becker's work, but found Becker (now deceased) extraordinarily inscrutable for me in his technical writing. Therefore, I had brief personal communication with him on the GDP portion of the matter, here reproduced almost in entirety.

Professor Becker's response eventually evolved into the George Washington University forum of 1999, below.

T. Petersik E-mail to Gary Becker (circa June 5, 1998):

To: Gary Becker (Lynn Flaxbart)

This follows my telephone conversation with Ms. Flaxbart June 4 regarding (1) my understanding of a point in your exposition on discrimination, and (2) an invitation to speak on the economics of discrimination as applied to a specific population.

We are trying to independently understand the theory before asking its application to the specific instance.

(1) Clarification

My understanding from “The Economics of Discrimination” is that there is a tradeoff between money and nonpecuniary (positive or negative) “discrimination effects” in any transaction. Is an implication, then, that discrimination against some group in employment results in reduced money-measured output, that is, the tradeoff for the nonpecuniary benefits of discrimination is reduced GDP? YES
[Gary Becker]

Background:

We work with a subpopulation banned by either law or custom from labor force participation, almost always confronting the primary argument that the bans are “good for the economy.” We argue that the bans are not “good” on economic grounds with respect to maximizing GDP. Because this is a pivotal point, and because the position is likely to gain some public visibility, we want to get it right. We’re prepared to reexamine our position if shown incorrect.

(2) Invitation to Speak

We have also been tentatively offered funding to invite notable economists for presentation in the late Spring, 1999. We would likely ask for a presentation applying the expert’s general views to the particular population. If past attendance is any guide, the audience will include Federal and state legislators, as well as business and labor interests, practitioners, and other policymakers.

I would appreciate any information on terms we need to consider in structuring an acceptable invitation.

Thank you for your consideration. You are welcome to respond by e-mail.

Gary Becker Response, June 30, 1998:

DEAR MR. PETERSIK:

YOU ARE INDEED CORRECT. DISCRIMINATION INVOLVES FOREGOING PRODUCTIVITY TO CATER TO TASTES FOR DISCRIMINATION. HENCE, SUCH DISCRIMINATION REDUCES MEASURED GDP, AS ARGUED ESPECIALLY IN CHAPTER 2 OF "THE ECONOMICS OF DISCRIMINATION."

I DO LECTURE IF I AM AVAILABLE, BUT MY LECTURE FEES ARE VERY HIGH. YOU PROBABLY SHOULD CONSIDER ALTERNATIVES.

SINCERELY,

GARY S. BECKER"

Petersik background: BA, MA Economics, University of Oklahoma; PhD, the George Washington University, specializing in labor and economic development; thesis "*Legal Income Opportunity and Property Crime Participation.*" 1969-71, US Army Military Police. US Bureau of the Census, National Prisoner Statistics, 1973-79. 1995-1999 National Work Group on Inmate Labor (NWGIL). Soros grant: National Forum on the Economics of Inmate Labor Force Participation (1999), the George Washington University. 2002-2005 Assessor for federally sanctioned "Prison Industry Enhancement Certification" program allowing private firms meeting specific criteria to engage incarcerated workers producing goods for civilian markets at prevailing wages. 2003, *Identifying Beneficiaries of PIE Inmate Incomes; Who Benefits from Wage Earnings of Inmates Working in the Prison Industry Enhancement (PIE) Program?* 1990 to Present, Labor Economist for International Citizens United for Rehabilitation of Errants (CURE www.curenational.org).

The National Work Group on Inmate Labor (NWGIL) was a federally supported ongoing series of meetings hosted by the National Correctional Industries Association between 1995 and 1999 featuring regular roundtable meetings among

business, labor, human rights, corrections, and correctional industries stakeholders attempting to find common ground in expanding prison industries opportunities and inmate employment. As a representative of CURE, I was welcomed as an outside observer and participant, and I remain extremely grateful to the NCIA and all participants for their welcome and openness to me in this long series of meetings. Their welcome provided me the opportunity of repeatedly hearing both the “facts” and emotional weights of arguments from all stakeholder sides, as well as ongoing commentary and views of elected national political figures in US Congressional discussions on prison industries legislation. And it afforded CURE and me opportunities of attending and then testifying before Congressional committees on US prison industries.

Soros Grant: A 1999 Soros grant facilitated engaging four “top” US economists of no known specific views or expertise on this US prison labor question: “Is it good for the US economy that prisoners be excluded from the civilian labor force? Answer “yes” or “no,” and then explain, comment, and provide policy recommendations. Top economists were to be invited attempting to include both liberal and conservative without in any way attempting to influence answers.

The four top economists who accepted invitations were (1) Ray Marshall, University of Texas, former Carter administration secretary of labor, and recognized expert on the economics of race discrimination; (2) Alan Krueger, Princeton, future chair of the president’s council of economic advisors in the Obama administration, publicly considered a “top” US economist under age of 40 at the time, (3) Richard Freeman, Harvard, highly regarded labor economist, and (4) Steven Levitt, Chicago, recommended by Gary Becker, and of future *Freakonomics* fame. Alan Krueger was joined in the work by Jeff Kling, also of Princeton. Conclusions: The complete transcript of the day’s proceedings, including comments by other stakeholders and discussion, are available for review. My own conclusion is that both the four economists as well as the audience were surprised at having, to some extent, backed into tentatively concluding unanimously that the economy would be better served if inmates were integrated into the normal US civilian labor force, so long as sufficient safeguards of public oversight were effected. The conclusion seemed truly novel at the time and all

economists caveated conclusions and called for more rigorous examination – none of which appears to have followed.

I did not challenge these conclusions at the time and was happily surprised at their unanimity, given its novelty then. Since then, however, I have been more surprised at my own and their timidity, and would challenge some basic assumptions and conclusions that we all shared at that time. In summary, I believe we all failed to sufficiently account for (1) the huge subpopulations, especially of minority individuals, families, and communities affected, (2) the productivity loss considered far too small, ignoring clear data showing millions of inmates perfectly capable of market employment based on employment at arrest, and (3) failing to account for the immense barriers to productive work resulting from corrections and criminal justice policies inhibiting education, training, and efficient labor force use inside institutions. My own views since 1999 have become far more assertive than surfaced at that tentative “new” time.

7. Attachment – 2019 Presentation to National Correctional Industries Association Conference.

Attached is a presentation given to the **NCIA** in 2019 summarizing problems with and proposals for improving US correctional industries. NCIA is the trade association for US correctional industries. Although I now hold views likely very challenging to this organization and believe traditional prison industries having most to lose (and gain?) from fundamental change, I have worked with this organization for decades and greatly respect the efforts of these people and the challenges with which they deal every day. They have been extraordinarily welcoming and helpful to me, as exemplified by their welcoming me to make this presentation at their annual meeting in 2019.

However, the presentation does softpedal some points on the terrible situation today, at the time out of respect for my hosts, but moreso now because I’ve come to believe we need to be much clearer to all about the damage we are doing in the present system. If error is to be made, overstatement is the better side.

Although I see traditional correctional industries as among the primary obstacles to reform of inmate employment opportunity, I think it important to clarify some key points regarding traditional prison industries.

First, **We are the primary culprits:** True, traditional prison industries are in part hamstrung by their privileged (and inefficient) structure of monopoly, monopsony, and a powerless labor force, all of which have the effect of stultifying those industries. However, beginning with the most junior employee and upward through managers, prison industry directors, wardens, heads of state departments of corrections, and state public safety directors, and finally governors, the existence and operations of contemporary traditional prison industries reflect public (voter) cultures, beliefs, expectations, and permissions, and *no change can occur in prison labor absent public assent*. Woe be to the head of corrections or industries who ventures private sector change without support of those atop. And with security being the near exclusive priority of governors, any risk of escape or crime is unacceptable. So the real burden of change falls on us, not on traditional prison industries.

Second, I – and I think we – owe great debts of gratitude to traditional civilian prison and prison industry workers. Correctional work is emotionally challenging and evidence increasingly shows, damaging to health. While admitting that these folks have chained their careers to traditional prison industries, nevertheless I have continually found these folks to be skilled, preternaturally optimistic, committed, caring, hard-working, and truly devoted to succeeding, but tied to a system intrinsically incapable of success. Both many individual directors of prison industries and their staffs, and especially the National Correctional Industries Association (NCIA) have been unfailingly welcoming and giving of their time to me in my research over the decades, and I am deeply grateful to them all.