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Employment Dimensions of Reentry:

Understanding the Nexus between Prisoner Reentry and Work

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Can Inmates Become an Integral Part of the U.S. Workforce?

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INTRODUCTION

American jails and prisons, for the first time in history, now hold more than 2,000,000 inmates. While the import of this milestone may be more symbolic than real, its fiscal impact is quite real regardless of one's politics. At \$40 billion annually, incarceration is a major budget item for most states. So it is likewise significant that the most recent data shows that more than two thirds of all state ex-offenders are re-arrested in three years. One successful program that has demonstrated success in reducing recidivism is prison work in industries. Yet, only 7% of state and federal inmates work in industries programs—despite compelling evidence that such programs benefit inmates, public safety and the economy as a whole. Stiff opposition from a narrow segment of employers and organized labor threatened with competition has meant that efforts to expand inmate labor have generally been stymied. At the federal level, there are active Congressional attempts to severely cut back on inmate labor. This paper discusses why and how reforming the current Federal Prison Industries program by opening up prisons to greater private sector prison employment is good public policy that can overcome resistance.

A BRIEF HISTORY OF INMATE LABOR

Inmate labor has its roots in the 1800s when inmates worked for private companies without pay. For example, by 1890 convict leasing in Alabama had become a significant operation, particularly focused on black prisoners. (White men usually remained inside the penitentiary or local jail.) In other cases, such as the use of inmate labor during a strike at the Tennessee Coal Company in 1891, inmate labor was used to break strikes. Inmate labor was not about rehabilitation or fostering a safer prison environment, it was about getting revenue to pay for prisons. And not surprisingly given the lack of legal and other safeguards at the time there were significant abuses. After hundreds of prisoners in various states died on the job because of hazardous conditions, unions and prison reformers rightly demanded a halt to the practice.

As in so many policy areas, the federal government got involved in the issue during the New Deal era. The 1935 Hawes-Cooper Act created Federal Prison Industries (FPI) as an arm of the Federal Bureau of Prisons and allowed it to employ federal prisoners in making goods for

sale to the Federal government. However, because the legislation was passed during the Depression, and was motivated by the fear that private jobs would be lost to inmate labor, the legislation outlawed interstate trade in convict-made goods (except if sold to the federal government), and placed a number of other restrictions on FPI.

In response to the need to provide prisoners with more work opportunities, Congress passed the Justice System Improvement Act in 1979. Among other things the Act repealed a number of the limitations imposed by the Hawes-Cooper Act and created the Prison Industry Enhancement Certification Program that allows prisons to link up with private companies. In particular, the bill permitted states to create prison work programs whereby prisoners would be eligible to be employed by private companies. Deductions could be made for room and board, federal and state taxes, family support, contributions to a state's crime victim fund and contributions to an interest bearing account that the inmate may use upon release from incarceration. However, in response to opponents who complained about competition with business, the legislation contained a number of restrictions, including that: inmates must be paid the local prevailing wage and given comparable benefits; written assurances must document that non-inmate workers will not be displaced or severely impacted; and organized labor and local private industry must be consulted before startup. Given these restrictions, it's not surprising that private sector employment of inmate labor has not grown significantly.

Both supporters and opponents of inmate labor agree the debate over inmate labor is at a critical juncture because employment in prisons could increase in the coming years as prison populations increase. Moreover, in recent years there has been increasingly vocal criticism of FPI, not only for competing with business, but also for how effectively they are carrying out their mission of employing prisoners. As a result, Congress has been taking a careful look at the issue of inmate labor, especially as it relates to Federal Prison Industries. Under the trade name UNICOR, Federal Prison Industries markets about 150 types of products and services to federal agencies, including furniture, textiles, electronic components, and engine repair. By mandate, FPI is limited to offering its goods and services to the federal government, with certain exceptions for projects under the "services" exemption. In return for this limitation, Congress has required that federal agencies purchase a portion of the products they need from FPI, even if the products cost more than they would from a private vendor.



INMATE WORK PARTICIPATION TODAY

Contrary to public opinion, most state and federal inmates work—at something. What that “something” is varies widely from simple maintenance work assignments to fairly sophisticated industries programs. (See Table 1.)

Overall work assignments.

Of the total 1,094,991 eligible inmate population, 53% have a work assignment. The largest share of jobs is in general institutional maintenance assignments, 43%. Industries programs employ just 7% of the eligible population. There is a significant difference between the Federal Bureau of Prisons where 23% of eligible inmates work in industries jobs and the state prison systems where about 6% of the eligible populations work in industries programs.

Table 1. Inmate Work Assignments in State and Federal Prisons

	State	Federal	Total
Total population	1,091,788	117,949	1,209,737
Restricted status	90,940	23,806	114,746
Total eligible population	1,000,851	94,143	1,094,991
General work.	394,599	77,785	472,384
Farm work	29,920	150	30,070
Traditional industries ^a	52,708	21,404	77,643
PIE program	3,531	-----	
Total work assignments	480,758	99,339	580,097
Percentage of eligible population			52.9%

Sources: 2000 Corrections Yearbook, 2000 CIA Directory

a. Total state industries jobs, according to the 2000 Corrections Yearbook is the 52,708 traditional industries jobs plus the 3531 PIE program jobs, 56,239 jobs. The 2000 CIA Directory counts a total of 62,595 state industries jobs.

Work assignments by product sales.

Among federal industries jobs, 31% are in clothing and textiles, 24% work in office furniture jobs, and 15% in electronics.¹ Within the states, while similar data are not centrally provided by the national association, the broad parameters of dominating products are well known. Among the four largest state industries programs (California, Florida, New York, Texas) that account for more that \$402 million in sales of the \$1,185 million of all state industries sales, garment assembly, furniture, license plates, metal fabrication, printing, agriculture, and optical are reported to account for up to 80% of sales.²

THE BENEFITS OF INMATE WORK PROGRAMS

There are a number of benefits from inmate work programs, including enhanced institutional security, reduced recidivism for inmates, an available workforce for business, lower public service costs for taxpayers, and finally, increased economic output for society.

Institutional security.

The significance of inmate work in maintaining institutional security is unquestioned among prison administrators. Routinely, administrators use the term “management tool” and industries almost interchangeably. Prison disturbances are commonly explained as a result of a lack of work programs. Former Federal Bureau of Prisons (FBOP) director James Bennett attributed disturbances in federal prisons in the early 1930s to a lack of work, as were state prison riots in the early 1950s also said to show the “absolute necessity for a well-planned and comprehensive work and production program.”³ In 1979, former Senator Charles Percy explained the need for the federal legislation to authorize the Prison Industry Enhancement program by recounting the “night-marish reality” of a prison riot in Potomac, Illinois.⁴ More recently, the importance of industries to institutional security is a constant theme in testimony of FBOP officials before Congress, and members of Congress seeking to reform the program fully acknowledge this issue.⁵

As an unquestioned “law” of prison administration, the correlation between inmate work programs and institutional security has not received significant attention from researchers. The FBOP Post Release Employment Project (PREP) study may be the best known study of impact of industries experiences on ex offender’s employment.⁶ It concluded that industries inmates were less likely to have a misconduct report, less likely to have a serious misconduct report and more likely to be rated as possessing a higher level of responsibility.



Inmates.

There is broad agreement that employment in industries provide important benefits to inmates. Three types of benefits are mentioned most often. First, reducing idleness helps inmates (as well as administrators and staff) by reducing tension within the institution. Second, depending on the nature of the work, work allows inmates to learn workplace habits, practices and readiness skills. In better jobs, inmates also learn specific and relevant job and vocational skills. (The significance of this benefit for inmates working for private sector companies is discussed below in more detail.) Moreover, the wages inmates earn helps inmates and their dependents financially, emotionally and psychologically.

Finally, studies on inmate tracking indicate that rates of recidivism or re-arrests are lower for inmates with industries work experience than for inmates without this experience.⁷ In 1991 the FBOP released an analysis of PREP. More than 7,000 program participants were evaluated over a two-year period. The study found that those offenders who received training and work experience while in prison had fewer conduct problems and were less likely to be arrested the first year after release.⁸ The study also found that upon release prison workers were 24% more likely to obtain a full-time or day-labor job during this time. Moreover, by the end of the first year of release year, 10.1% of the comparison group inmates had been re-arrested or had their conditional release revoked, compared with 6.6% of the program participants. Further, 72% of the program participants found and maintained employment during this period, compared with just 63% of the comparison group inmates. The study concludes that “It appears that prison employment in an industrial work setting and vocational or apprenticeship training can have both short- and long-term effects that reduce the likelihood of recidivism, particularly for men... Therefore, correctional industries work and training programs could help to reduce prison populations.”⁹ These studies are not surprising since statistics show that offenders are more likely to be unemployed at time of arrest. One study by the National Institute of Corrections found that up to 40 percent of all offenders were unemployed or marginally employed prior to arrest.¹⁰

At least one state study has corroborated these findings. A New York State Department of Labor study found that 83 percent of probation and parole violators were unemployed at the time of violation.¹¹ In 1993, a New York State Department of Correctional Services study of

release outcomes for offenders employed in the production of eyeglasses found that the vocational program was effective in lowering probation failure rates and rates of rearrest for program participants: at 12 months after release, 3 percent of program participants had been returned to department custody compared to eleven percent of the control group; and at 84 months after release, 34 percent of program participants had been returned to department custody compared to 54 percent of the control group.¹² Lower rates of recidivism are not just good for society by reducing crime, they keep prison populations smaller than they would otherwise be, saving taxpayers money.

Businesses.

For many years, the benefits to businesses from employing inmates has been in question. Positive anecdotes seemed to be matched with negative anecdotes, and the numbers of companies in the federal PIE program remained relatively small. More recently, as employment rates reached historic lows, offshore production accelerated, “skills shortages” moved to the corporate front burner, anecdotes of productive inmate workers seemed to increase. In 2002, the Enterprise Prison Institute completed a field survey of inmate employers to explore some of these issues. The survey of inmate employers sought to attain an understanding of their views of the strengths and weaknesses of employing this workforce as compared to an alternative domestic workforce.¹³

Two conclusions stand out from the data. First, employers’ regard inmate workers as a quality workforce; secondly, they believe inmates receive valuable training.

After having employed inmates for an average of about six years, employers’ believe that the inmate workforce is a quality workforce. This view represents a notable change from the views employers expressed when they first decided to employ this workforce. At this time, employers spoke of the availability of inmate workers.

Employers strongly spoke of the quality of the inmate workforce in responses to the question of what they liked best about employing inmates. Responses of workforce “quality and productivity” far outweighed “lower costs” 53% to 7%. Additionally, employers rated inmates as

somewhat more productive than a domestic workforce might be, and 92% said they “recommend” the inmate workforce to business associates. As one employer explains: “Inmates learn that the success of our company depends on the satisfaction of our customers with our product. Quality, service and price have to meet expectations. Our futures are intertwined. They are justly proud of what we have accomplished.” This view represents a shift in attitude as compared to when employers first decided to employ inmates. Earlier, only 5% of employers’ responses referred to a “quality” workforce, while 39% referred to an “available” workforce.

(This current positive view of inmate worker quality is “re-enforced” in responses to other questions. When asked, “what they liked least”, there is just one mention of the need to improve inmate worker quality. When asked what they would like changed, just one employer responded by requesting “better” inmates.)

Employers provide inmates training that is significant and valuable.

While measuring the individual or economic value of the skills training was beyond the scope of the field survey, the survey queried employers’ views on training. These findings provide support for concluding that inmates learn important skills in these jobs, and corroborate anecdotal evidence that prisons can provide an effective job-training environment. In describing what inmates learn, there is significant emphasis on workplace skills; i.e.: issues of “teamwork, dependability, pride, job readiness, communications” accounting for 64% of the responses.

The value of this training appears significant. The skills inmates attain while employed in prison appear to parallel what the National Association of Manufacturers (NAM) members claim their production workers lack—“basic employability skills.” In a member survey released in December 2001, NAM reported a significant worker skills shortage. The most common reason NAM employers report, “rejecting applicants” is “inadequate basic employability skills” (attendance, timeliness, work ethic, etc.). Likewise, the “most serious skill deficiencies in current employees” are also these basic employability skills.



This data provides supporting evidence that in today’s environment, employers consider inmate workers to be productive workers—“more productive” than the domestic workforce—in a variety of manufacturing, assembly and services production settings. While further research is needed to define the particular variables that comprise greater and lesser “productivity,” these findings do suggest that the nature of the “benefits” to business are fundamentally different than what either program opponents allege or what businesses themselves first assumed it would be.

Program opponents often claim businesses’ only interest in employing inmates is to cut costs by using—if not exploiting—“cheap labor.” This is a staple of criticism from the political left. When employers in the EPI survey first started employing inmates, cost reduction seemed to be a major consideration. Experience changed their views. While all businesses seek to reduce costs, it seems clear that reducing costs is not the key factor explaining why these employers continue to employ inmates and continue to put up with (what they consider) the ongoing difficulties and burdens of dealing with the prison bureaucracy. Reducing costs, as noted above, received only 7% of the responses in this survey question. Rather, these employers focus on the quality of inmate workers, their interest and motivation in doing a good job, and their high productivity.

The importance placed on “quality” factors over cost reduction factors, combined with the assessments of workplace training skills acquisition, appear to place the major benefit to business along side (not opposed to) the major benefit to inmates. In this view these employers have been able to create inside state prisons what most employers strive to create inside their companies: i.e.: environments of “high productivity” and “high learning.” In this view, these successful prison training and employment sites invite comparisons with Job Corp training sites. Prisons, like Job Corps centers, offer unique advantages in dealing with the barriers to training “at risk” populations. Both types of training sites, while obviously different in key respects, are also similar in other respects. Each provides participants key ingredients for success: i.e.: daily support services and structure, and separation from an unhealthy home or family life.



Taxpayers.

Taxpayers can also benefit from inmate work if a portion of the revenue from prison work goes to pay for the costs of housing prisoners and to pay for victim restitution, child support and the like. Indeed, the majority of Americans support inmate labor because they believe that prisoners should help offset some of the costs of incarceration.¹⁴ It costs approximately \$40 billion annually to incarcerate prisoners in local, state and federal prisons. That works out to approximately \$20,000 a year per prisoner. Surely prisoners can work and contribute something to help pay for this so that taxpayers don't have to pay as much. Opponents of inmate labor use the fact that some inmate laborers are lifers with no chance of release to argue that the focus on reduced recidivism is just a sham. The fact is that requiring a lifer to work and contribute a portion of his pay to room and board is consistent with the notion of the prisoner's responsibility to give something back to society to pay for his crimes and costs to society of incarceration.

The Economy.

Finally, because it leads to increased production of goods and services, inmate labor boosts overall national economic output. If a more robust inmate labor program succeeded in employing an additional 350,000 prisoners who produced an average of \$35,000 per year in value-added, the U.S. economy would be \$12.2 billion larger. The only way this would not be the case is if the added prison work displaced private-sector work and that those resources were not redeployed in other parts of our economy. But such "job churning"—whether from trade, technological innovation, or changes in consumer taste—has always been part of our economy, and the only way such churning would reduce overall output is if the displaced workers were not reemployed again. Yet, considering that 7 million welfare recipients moved from welfare to work between 1996 and 2000 while the unemployment rate went down, it's clear that the economy can easily add several hundred thousand prisoners to the labor force over the next five years without increasing unemployment rates. In fact, as the experience of the late 1990s showed, increases in labor force have no effect on the unemployment rate because new workers are not just workers, they also become consumers. As a result, concerns about whether the economy is strong enough to support an increase in inmate labor fundamentally miss the point.

THE HURDLES TO GROWTH

Despite the significant public policy benefits of industries programs, important hurdles prevent these programs from expanding. Hurdles vary from broad philosophical issues about the purpose of prisons and objections to inmate workforce participation to concerns about “displacement” of civilian workers by inmates, conflicts between the cultures of prison administrators and businesses, inherent risks associated with operating inside a prison, and practical concerns of prison space and “incentives” available to attract companies.

Philosophic Opposition: Punishment versus Rehabilitation.

Criminal justice and prison policy issues are thrashed out within parameters of differing notions about what prisons should do—punish or rehabilitate. At both ends of this spectrum, there is philosophical opposition to private sector employment of inmates. Some conservative policy makers who favor more “punishment” see private sector “employment” as a privilege undeserving of “convicts.” Likewise, some liberal policy makers and civil rights advocates fear inmates can be exploited from private sector companies or that inmate labor encourages a repressive state to incarcerate more people to exploit their cheap labor. Such views are not confined to leftist fringe, but are held among many on the left. Former Secretary of Labor Robert Reich states: “In other words, without really intending to do so, the nation is in the process of creating a giant jobs program for people who are likely to be unemployed. The only problem is, in order to be eligible for it, you’ve got to be in prison.”¹⁵ Reich incorrectly assumes that inmate labor is a substitute for regular labor.

(Public opinion research shows strength for both “rehabilitation” and “punishment” impulses. “Tough on crime” sentiments are regularly reflected in opinion surveys (like the Gallup polls) showing support for the death penalty or agreement that the criminal justice system is “not tough enough.” Conversely, strong majorities support prioritizing addressing “social problems” over “more law enforcement.” Doble Research¹⁶ has documented strong support for “alternatives” (rehabilitation) over incarceration (punishment). EPI surveys of business leaders in Florida and Iowa, and a national public opinion sample show support for alternatives to incarceration and support for preparing inmates for release over long sentences.¹⁷

Issues of “Displacement” and “Unfair Competition.”

Some oppose inmate labor because they believe that it takes away jobs and business from “regular” labor and businesses. Unions, businesses and trade organizations have launched campaigns in Congress to limit its expansion and to even roll it back. They make the case that inmate labor, especially as operated by FPI, is essentially unfair because it takes jobs from law abiding Americans and business from entrepreneurs. Opposition from businesses who lose contracts is understandable, and given that they are losing business to a government enterprise that employs prisoners at rock bottom wages makes it doubly difficult for them to swallow. Likewise, workers who lose their job due to competition with inmate labor feel particularly aggrieved. Organized labor and their strong supporters have been particularly outspoken. Gordon Lafer, a University of Oregon professor and inmate labor opponent argues that a “free market” economy ought to have no place for a vast army of prisoners undermining the wages of working people.¹⁸

Market displacement, however, doesn’t mean that inmate labor is not good for the nation and that its benefits don’t outweigh the costs. In fact, in many ways this debate is similar to the trade debate. While the evidence is clear that free trade helps grow the economy, it also hurts certain workers and firms in the short run. The same can be true with inmate labor if the inmates are producing items that displace or take away work that private companies are doing (although the inmate labor has the advantage over trade in that it also results in more Americans working, whereas trade only changes the nature of work, not the number of people working). The answer though, is to expand assistance for displaced workers and affected firms, not to stop inmate labor.

One reason why opponents believe that inmate labor is a zero-sum game that takes jobs from others is that their model of the economy is one in which there is a fixed amount of demand for goods and services. This fixed demand determines the number of jobs and amount of business. If another business fills the demand, the companies and workers originally fulfilling it will cut back on output and the economy will be no better off. Lafer states that, “Inmate labor must be opposed on the more durable basis that it threatens free labor.” According to Lafer making prisoners work real jobs (making car parts, taking airline reservations, t-shirts, etc.) as opposed to “carrying boulders from one side of the road to another” “takes jobs away from

people on the outside” and is “at its heart anti-labor.” Labor is not alone, as businesses wave the small business flag to argue that inmate labor simply takes from regular business to prison business. If there were a limited and immutable demand for auto parts, airline reservations, and t-shirts then substituting inmate labor for regular labor would simply transfer jobs from one group of Americans to another with no net benefit. But as discussed above it’s not as if any resources laid off in the private sector remain dormant in perpetuity. The capital, labor and entrepreneurial talents will get redeployed and produce wealth and income.

There is no doubt that in some cases, inmate labor, especially when conducted by prison enterprises like FPI, can result in companies losing contracts and some of their workers losing jobs. For example, in 1998 Glamour Glove, a Long Island, NY maker of gloves was in jeopardy of losing a portion of its government contracting when FPI decided to get into this area. Through legislative pressure, they were able to force FPI to not go into this area. In these cases it’s important to provide assistance to the workers and companies and workers to make the adjustment, just as we do with companies negatively impacted by trade. But even if Glamour Glove or another company were to lose their contracts, its important to recognize that inmate labor isn’t simply a zero-sum game, it adds to overall output. As a result, when viewed from this growth economics perspective it’s clear that the oppositions prescription of keeping these prison workers idle or even worse, having them break rocks, does nothing to add to economic output and wealth of our economy. When prisoners work the economy is better off—the total economic output of society is larger than what it would be if those prisoners were just moving rocks.

Cultural Clashes: Prison Administrators and Business Managers.

When private sector companies first start running a business inside prison, one of their first lessons is, in the spirit of a best selling book, “prison administrators are from Mars and business people are from Venus.” The prison system command-control bureaucratic structure and single-minded concentration on enhancing security provides a sharp contrast to an entrepreneurial mission focused on leveraging market opportunities. One culture abhors risk-taking while the other celebrates it. The private sector, according to the EPI survey, deems this important: employers’ complaints associated with the prison “bureaucracy” are the premiere cause of their dissatisfaction; i.e.: 44% of the responses in the EPI survey refer to issues of security, red tape, or negative staff attitudes.¹⁹ Another 16% refer to high “inmate turnover.”

While some of this turnover is due to releases and positive drug tests, employers seem to believe much of it is attributed to prison officials simply not choosing to cooperate with the legitimate needs of employers for a stable workforce.

Perceived Market and Political Risk.

One issue which anecdotal evidence indicates is always in the minds of business managers is the political and market risks associated with employing inmates. Companies feel that there may be a backlash against their products or services if it becomes widely known that they are produced by inmates. This perceived risk is typically held on an ongoing basis by employers, though there is uncertainty as to its associated costs. The presence of this issue is evident from initial interviews with company executives; it is raised as an issue in the EPI survey and in a Deloitte & Touche audit of six private sector partnerships.²⁰

Incentives and Prison Space.

State industries administrators frequently speak of a lack of space and financial incentives to attract companies. Because there are typically significant amounts of empty building space allotted for industries programs among the majority of states, any “shortages” reflect the extent that this is a “local” business. While there seem to be signs that this is changing, in most regards accessing the inmate workforce is a “local” issue because most companies are not yet willing to move cross country to employ inmates. As a result, especially as prison crowding has reached new heights in some states, the local capacity of available prison space sometimes does not match local “demand.”

Presently, the incentives available to offer businesses are limited to reductions in costs related to leasing space, savings on employee benefits, and Workforce Investment tax credits. There are calls for additional financial incentives. These calls are ill advised. Seen as a unwarranted benefit just for inmates, such (well-intended) proposals would likely have an adverse affect on the overall welfare of these programs.



POLICY REFORMS FOR FEDERAL AND STATE PRISONS.

Reforming federal and state inmate labor laws and institutions is critical if we are to expand inmate labor. At the federal level, in order to both ensure that inmate labor can expand and to limit unfair competition with the private sector, Congress needs to take away the federal sourcing requirement of FPI, but allow federal inmates to produce and sell to the private as well as public sector. The principal inmate labor reform legislation in 107th Congress, H.R.1577, (the legislation has not yet been reintroduced for the 108th) would eliminate the mandatory source requirement for federal agencies to buy from FPI (and provide taxpayer funded vocational training and subsidized work for non-profit agencies) but it would not allow federal prisoners to work for private sector employers. This is not the right path to reform.

Options for reform.

First, FPI could simply be allowed to sell its goods in the private marketplace. However, there are several problems with this. In spite of the fact that FPI employs over 22,500 prisoners and had sales of more than \$583 million in 2001 it made a profit of only \$4 million and actually lost \$12.8 million in 2000. This wouldn't be so bad if it was using some of its pre-profit income to pay for the upkeep of prisoners, but while UNICOR itself is self-supporting, no "profits" from it were used to offset the costs of incarcerating the prisoners. In fact, by law, any profits must go back into the operation of UNICOR, not into offsetting federal costs of running prisons. They pay \$26 million in salaries to FPI staff and an estimated \$40 million to prisoners, but only \$2.9 million went to restitution. In large part this appears to be the result of a conscious FPI strategy to focus specifically on low-wage jobs while keeping productivity low to employ more workers. According to Kathleen Hawk Sawyer, director of the Federal Bureau of Prisons, "low wages provide FPI the opportunity to operate in a labor-intensive manner and to employ more inmates with less output of finished goods. The sales per inmate in FPI is one-third to one-fourth that of the private sector worker.... Our country imports tens of billions of dollars of products made in countries where the prevailing wage is either equal to, or lower than, what FPI pays its inmate workers."²¹ Not surprisingly, total FPI wages (not just those the prisoners get to keep) range from 23 cents to \$1.15 per hour. It's striking that even at these low wages FPI needs a mandatory sourcing requirement to sell to the federal marketplace.

There is another problem with FPI operations and that is that it is employing workers largely in old economy sectors that will see employment declines in the next decade. Thirty percent are employed making clothing and textiles while 26 percent make office furniture. According to the Bureau of Labor Statistics employment in both sectors is expected to decline over the next ten years due to trade and technology. The chances of released inmates getting work in these sectors is low. FPI has been slow to expand into new economy sectors, that could include call center operations, electronics assembly, data entry and others. Moreover, even in these sectors, in many cases workers are contributing very little to the final value of the product. For example, much of their furniture is simply assembled by prisoners who add very little value.

Thus, while there is a clear and compelling case to be made for more inmate labor, both to help prisoners and to help society, it's not clear that FPI itself is working. In many ways this shouldn't come as a surprise. As a federal government agency it doesn't have specialized knowledge in how to run a commercial business. Moreover, FPI has a built-in incentive to employ as many prisoners as possible, but not necessarily in occupations that they are likely to be able to get jobs in the future or at wages that can offset the costs of the federal prison system. In addition, FPI has become focused so much on expanding sales, even if the prisoners are doing little of the work and FPI is buying close to finished items, that they have moved away from their core mission: employing prisoners in jobs that give them skills and generate enough earnings to offset some of the costs of housing prisoners. But rather than seek to limit prison work as the protectionists want, a more effective alternative would be to let private companies hire federal (and state) prisoners to do work.

The mistaken current paradigm.

Before moving forward with reform at the federal level, the issue of unfair competition needs to be addressed. The Sensenbrenner legislation, reflecting deep distrust of Federal Prison Industries by both business and labor groups, would require that before introducing any new products FPI would have to go through a daunting process of approval that only a former Soviet central planner could love. It would let FPI enter into the production of new products only if their board approves it based on a complicated study that must be done to take into account factors such as the unemployment rate of the particular industry sector which produces the product FPI wants to produce (a figure that is by definition impossible to calculate), the projected change in

Federal demand for the product; and whether the product is trade sensitive. Moreover, it precludes FPI from entering into new products if the product is “produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or is an import-sensitive product,” that latter of which is defined as a product where the import to domestic production ratio is greater than 25 percent. In a perverse way the bill would limit production only to those items that the nation is already strong in. In contrast, H.R. 1535, “The Prison Inmate Act of 2001, introduced by Reps. Wolf (R-VA) and Scott (D-VA), takes the opposite approach. It would create an eight member “Foreign Labor Substitute Panel” that would allow FPI to enter into new products and services only if “the goods, wares, or merchandise proposed to be .. produced ... would otherwise be produced by foreign labor.” In this case, workers would gain skills in industries that don’t produce domestically, so when they get out of prison with these skills they would find it difficult if not impossible to find work in a U.S. company making the good or service. Not only does this not help the inmate when they are released, it does little to help the economy by imparting skills that the economy needs.

At their core both bills are based on the mistaken notion that inmate labor hurts the U.S. economy and is unfair to regular labor and businesses. And so while Congress can’t bring itself to completely eliminate the program because of its positive effects on inmates, they hope to erect enough draconian and bureaucratic barriers to limit the political fallout from having prison industries compete. And in order to keep prisoners doing something “productive” they want taxpayers to foot the bill. There is another way.

Retooling FPI’s mission.

Responsibility for this dilemma is two-part. First, the FPI model is based on the national, manufacturing, mass production, low-skilled labor economy of the 1930s—and not the global, high-skilled, services economy of today. Second, FPI is forced to operate within a legislative mandate that includes conflicting objectives. Before reforms can be successful and significant improvements made, the very foundation of FPI’s statutory existence must be retooled.

Retooling requires two steps.

First, FPI’s mission must be revamped and strengthened to provide a strategic focus that reflects the economy of 2003. This means FPI must clearly prioritize a) skills development for inmates serving their last three to five years, and b) financial self-sufficiency. Currently, FPI is

mandated to work as many inmates as possible, provide job skills training, minimize adverse impacts on the private sector, and be financially self sufficient. These conflicting missions highlight differing objectives and beneficiaries of inmate work. Recently, with significant increases in the inmate population, creating the numbers of jobs that provide FPI a good financial return seems to have taken priority over creating jobs that provide job skills training and workplace preparation. Fulfilling a “FPI revenue—inmate idleness” objective requires different jobs than does fulfilling a “skills acquisition” objective. This is highlighted in the table below.



<i>Objective</i>	<i>Primary Beneficiaries</i>	<i>Key Job Criteria</i>
<i>Prison revenue, Inmate idleness</i>	<i>Prison, taxpayers.</i>	<i>Shallow learning curve, low-skilled work, FPI profit</i>
<i>Inmate idleness</i>	<i>Security, inmates</i>	<i>Open</i>
<i>Skills acquisition</i>	<i>Taxpayers, inmates, security</i>	<i>Steep learning curve, higher skilled work, higher wages in a demand occupation</i>

Two key points are highlighted from this table. First, there can be a direct conflict between low skilled, mass production jobs to seek revenue versus jobs to provide inmate skills. The second point is that reducing inmate idleness does not necessarily require low skilled, mass production jobs, and can be accomplished through other types of jobs, including higher skilled private sector employment and as a transition measure, community service employment.

FPI has voiced concerns that private sector employment will not provide enough jobs to keep enough prisoners from being idle. This may be true in the short term, especially if FPI does not take adequate steps to partner with the private sector, in the long run it may or may not be true. Therefore, a second step, as a temporary measure to reduce idleness until sufficient numbers of private sector jobs are created, should be to create an office within FBOP to facilitate and manage community service projects that work inmates. One model FPI should examine is the community service model developed by the Ohio Department of Rehabilitation and Correction, with a skeleton central office staff and full cooperation from prison wardens. As such, an FPI office will address FBOP concerns of idleness and remove the understandable pressures for FPI to create *quantities* of jobs. Consequently, FPI can focus on its new mission of partnering with the private sector to create jobs for inmates that impart skills and create revenues that exceeds costs.

By taking these steps, FPI can be freed in the short term from the demands to create greater numbers of low wage and low productivity old economy manufacturing jobs, and instead seek to create higher-skilled jobs through the private sector. Rather than erecting a host of bureaucratic hoops so that FPI avoids competing with any American business, let the market decide how to employ inmate labor. Congress should allow companies, under the supervision of FPI, to come employ workers making products and services that the companies produce.

Federal reform efforts should focus on the following:

- **Eliminate FPI preference to sell to federal government as long as private sector companies are allowed to employ prisoners to make virtually whatever product or service they want to.**

Private companies should be able to go into federal or state prisons in all states and with the consent of the prison officials hire prisoners to work for pay as their employees. Companies should be able to negotiate a contract with the prison that covers payments for the space, some of the security costs, and wage levels. At the federal level, FPI should transition out of the business of making and selling goods. Instead they should facilitate the employment of inmate labor by private sector companies. In their new role FPI would provide the security and space for private contractors to set up production facilities inside the prison. This means that the current FPI preference which they enjoy when selling goods and services to other federal agencies would be eliminated, when the restrictions on private sector employment in federal prisons are removed.

- **Lift federal restrictions on the interstate transportation of goods and services produced in state prisons.**

Notwithstanding legislation passed in 1979 to allow limited private sector employment of prisoners in state prisons, such programs have grown slowly in part because of federal restrictions. Private companies employing state prison inmates should be able to produce and sell anywhere in the world any goods or services they choose, provided that prison officials approve.

- **Subject federal and state prison private sector workplaces to OSHA inspections.**



In contrast to current practices, federal prison workplaces should be subject to OSHA inspections to insure that inmates have the same safety as regular workers.

- **Extend the Trade Adjustment Assistance Act to cover workers displaced by inmate labor.**

Society as a whole benefits from trade, as it does from inmate labor. But in both cases, individual companies and workers can be negatively impacted. As a result, while such displacement can be expected to be minimal, it's important to allow regular workers (and companies) who can document that they lost their job (or business) due to inmate labor to be eligible for TAA benefits.

- **Mandate that all state prisoners who can work do work, provided that work is available.**

Oregon voters approved a ballot measure in 1994 mandating that all prisoners work 40 hours per week and requiring the state to actively market inmate labor to private employers. But not all states do this. Massachusetts prohibits employment of inmates by private companies. Georgia ruled that it is illegal to replace paid employees with regular inmate labor, as well as using inmate labor in private, for-profit facilities. Most citizens see the fairness of this and don't want prisoners sitting around their cells all day watching television or pumping iron, while they have to work.

- **Institute an FPI ombudsman program to investigate complaints by workers about unfair working conditions.**

While prison administrations can treat prisoners inappropriately whether they are working or not and are subject to the current laws and rules governing prisons, it is worth creating such an ombudsmen position to investigate allegations of abuse.

- **The Bush Administration should appoint a national business group, in the model of welfare to work, to galvanize the business community to participate in training and employing inmates.**

How well the inmate workforce can be integrated into the global workforce will depend significantly on well business leaders accept inmate workers as a potential workforce solution to certain challenges in the years ahead. Hiring welfare recipients was not initially embraced by

many business leaders. However, through the efforts of the Welfare to Work Partnership, a group of business leaders encouraged by President Clinton, that situation changed significantly.

- **Institute a wage policy with federal minimum wage as a benchmark.**

Wages are, arguably, the single most controversial issue associated with inmate workers. Wages are a cause of philosophical, economic, financial and practical disagreements. Inmate wages are directly associated with both concerns of “displacement” and “unfair competition.” For example, organized labor tends to support the highest “prevailing” wage; corrections administrators tend to support sub-minimum wages. One compromise is to require payment of the federal minimum wage. This is a position both authors have traditionally supported.

The issue of whether there should be a sub-minimum “training wage” is more complex. One can make an argument that for occupations that require more skills and training that employers should be able to pay a sub-minimum training wage for a limited period of time.

The authors view this issue somewhat differently. Atkinson worries that such a program could easily devolve into a means by which companies could get around paying at least the minimum wage and could give an incentive to companies to employ prisoners in lower skilled occupations. This would reduce the amount of money companies pay to government to employ prisoners. It could also make it more difficult to gain political support for expanded prison labor, especially from unions who oppose low wage competition.

In contrast, Rostad believes that a training wage could expand inmate training opportunities. As a result, he urges a pilot program as outlined here. Macro-economic factors suggest a sub-minimum wage in carefully defined situations could respond to a need in the economy. Demographic, educational and training trends indicate significant skills shortages in numerous high-demand occupations will continue. This suggests that there can be continued demand for expanded inmate job training, that can be met that would minimize claims of “unfair” inmate competition.

Requiring a company meet three basic criteria in order to qualify will ensure the job skills acquisition will meet both the needs of the economy and inmates. First, the occupations must be “demand occupations” (higher-skilled occupations, projected to experience continued shortages as determined by the Department of Labor). Second, average occupational wages must be a minimum of 150% of federal minimum wage. Third, the occupation must be “global,” with a

minimum of 25% of comparable work is conducted offshore. Meeting these criteria, American companies should be allowed to train inmate workers (with five years or less remaining prior to release) while paying sub-minimum wages for a period of up to 18 months. During this training and employment period, if an inmate has become “certified” in the occupation by the accepted industry certification standard, that inmate will then be paid at least the federal minimum wage. Such a program would enable more inmates to work and be trained (at no cost to taxpayers)—with less of a *perception* of unfair competition—in job skills that prepare them for good jobs.

- **Provide incentives to prisons to promote private sector partnership employment.**

Success in developing private sector partnerships and community service projects will depend largely on the abilities and willingness of the wardens and their management teams. This represents a fundamental change as compared to current FPI operations. There needs to be appropriate incentives available for prison management and staff for superior performances making this change.

CONCLUSION

There is a lot that can and should be done to make sure that workers and businesses benefit in the New Economy. Opposing inmate labor is not one of them. In fact, limiting inmate labor would lower economic growth, while reducing the effectiveness of prisons to move prisoners to productive and law-abiding lives when they are released.

Endnotes:

¹ UNICOR 2002 Annual Report.

² California State Auditor, Prison Industry Authority, April 1996.

³ See: Federal Bureau of Prisons. “Factories with Fences: The History of Federal Prison Industries.” Washington, DC: Federal Prison Industries, Inc. 1996.

⁴ Congressional Record, May 21, 1979.

⁵ See, for example, testimony of FBOP Director Kathleen Hawk Sawyer in 1996, 1998. HR 1577, introduced in the 107th Congress, sought to accommodate this concern of industry administrators.

⁶ Federal Bureau of Prisons, *The Post Release Employment Project*, 1991.

⁷ The federal PREP study, *op cit*. Also, studies or tracking in numerous states, including Florida, South Carolina, Texas, Utah and Ohio, indicate a positive impact from industries experience on recidivism rates.

⁸ William G. Saylor and Gerald G. Gaes, "The Post-Release Employment Project" *Federal Prisons Journal* 2, no. 4, Winter 1992, pp. 33-36

⁹ William G. Saylor and Gerald G. Gaes, *The Effect of Prison Employment and Vocational/Apprenticeship Training on Long-Term Recidivism*, U.S. Federal Bureau of Prisons
<http://www.csc-scc.gc.ca/text/pblct/forum/e08/e081d.shtml>

¹⁰ Donna Bellorado, *Making Literacy Programs Work: A Practical Guide for Correctional Educators*, National Institute of Corrections, 1986.

¹¹ State of New York Department of Labor, "Ex-Offender Employment Rights," *Your Winning Edge*. (Undated): 1

¹² Kathy Canestrini, *Wallkill Optical Program Follow-Up*, New York State Department of Correctional Services, 1993: pp. 1-8.

¹³ "Employing Prison Inmates: Does it Work?" The Enterprise Prison Institute, April 2002.

¹⁴ *The First National Public Opinion Research on Prison Inmates Working for Private Companies*, Luntz Research Companies, national survey of 1005 adults, +/- 3.1%, April 29 --May 1, 1998.

¹⁵ Robert Reich, "Prison Labor" *The American Prospect*, May 11, 2002.
<http://www.prospect.org/columns/reich/mp/reich-r-000511.html>

¹⁶ dobleresearch.com

¹⁷ See the 1995 Florida Business Leadership Survey, the 1997 Iowa Survey of Business and Labor, and 1998 National Public Opinion Research on Prison Inmates Working for Private Companies.

¹⁸ Gordon Lafer, "Captive Labor," *The American Prospect* vol. 10 no. 46, September 1, 1999 - October 1, 1999.

¹⁹ "Employing Prison Inmates," *op cit*.

²⁰ "Inmate Labor Costs," May 1999 for The Workman Fund.

²¹ http://commdocs.house.gov/committees/judiciary/hju57231.000/hju57231_0.HTM#93. However, by law UNICOR is required to employ as many inmates as possible.