Redefining Prison Labor: Expanding the New York Fair Labor Standards Act

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THESIS
To end the exploitative system of un/underpaid prison labor, the New York State Assembly should expressly classify prison laborers as “employees” under the state’s Fair Labor Standards Act to afford them equal access to benefits as other state employees.

BACKGROUND AND ANALYSIS
Prison labor, as it exists today, traps disenfranchised and marginalized populations in disciplines of dangerous and inhumanely compensated physical labor performed on behalf of for-profit or state prisons. In New York State, most assignments pay $0.10 to $0.26 per hour, and opportunities for earning higher wages are restricted by draconian wage policies within the incarceration facilities. While multiple studies have demonstrated a link between an imprisoned person’s access to good vocational programs and their decreased likelihood of recidivism, such programs are difficult to access, or even implement, because the goals of the system (management of the population) conflict with the goals of the program (successful reentry). Issues including the relative unavailability of reentry programs and inherent systemic biases also increase the already high rates of recidivism. For multiple marginalized communities, the lack of protected employee status prohibits accessing crucial resources including reporting structures for sexual assault and child and healthcare services, which disproportionally affect women of color.

These negative socioeconomic externalities are made possible by the New York State Fair Labor Standards Act’s absence of express recognition of prison laborers as “employees.” Though research has shown the economic benefits of prison labor are in fact greater if prisoners are afforded a living wage, the exclusion of prison laborers from the category of “employee” prevents them from having any legal claim to adequate compensation or benefits in New York State.

TALKING POINTS
• The current form of prison work draws in the unemployed, disenfranchised, and discriminated against, trapping them into disciplines of precarious waged labor.
• The economic benefits would actually be greater if prisoners were afforded the same working rights as the general public.
• It is imperative that prison laborers, whose labor contribution adds over $30 billion to the U.S. economy, are granted all of the basic rights that Americans “on the outside” are able to enjoy: minimum wage, worker’s compensation if injured in an accident, the right to unionize, etc.

POLICY IDEA
The New York State Legislature should extend the definition of “employee” within the New York Fair Labor Standards Act (NYFLSA) to categorically include imprisoned labor in order to provide imprisoned populations with the wages, benefits, and protections attendant to the NYFLSA. Such legislation will present imprisoned laborers with a safeguard against exploitative labor conditions while also decreasing their likelihood of recidivism. New York should lead the way in making fairness and equity, not profit and criminalization, the central components of prison labor regulation.
POLICY ANALYSIS

Statutory recognition of prison labor as employment is the most effective method of bringing prison labor in line with values of equity and fairness. It requires convincing a critical mass of NY state legislators to pass legislation extending the definition of “employee” within the New York Fair Labor Standards Act (NYFLSA) to imprisoned laborers, and little else. Allowing imprisoned people to earn a living wage during their incarceration would reduce recidivism more widely than allowing only those who can access the limited number of post-incarceration reentry programs to obtain gainful employment.

Providing imprisoned people with fair wages reduces the likelihood of recidivism. Because African Americans are more likely (by around 10 percentage points) to recidivate than white people, our policy would have an especially benign impact on the post-incarceration lives of African Americans. Moreover, the increase in imprisoned persons’ economic output that would accompany attaching the federal minimum wage to prison labor would be enough to give each U.S. citizen $125.

The carceral state disproportionately ensnares people of color, LGBTQ, and the impoverished. African Americans are incarcerated in state prisons at a rate five times that of white people, LGBTQ populations are incarcerated at a rate three times that of the general population, and low-income communities are coerced into accepting jail sentences through mechanisms such as money bail. Thus, creating a prison labor system that carries wages and benefits commensurate with those of “outside” jobs would primarily benefit those who carry identities targeted by systems of mass incarceration.

NEXT STEPS

The coalition including the Urban Institute Justice Policy Center (UIJPC), local prison justice community organizations, and organized labor groups such as IWW should work on creating and lobbying for a bill that would classify prison labor as employment under the New York Fair Labor Standards Act. The UIJPC and community organizations have evident commitments to improving the wellbeing of incarcerated people, which make them natural allies in this effort. Additionally, the Industrial Workers of the World (IWW) have demonstrated an interest in reforming prison labor by organizing nationwide prison strikes. This manifest commitment to prison labor advocacy could be translated into lobbying efforts for the aforementioned policy. Together, this coalition would target Scott Stringer, who is the current New York City Comptroller and has a progressive legislative record. Lastly, we would consult with labor lawyers and prison officials in appropriately re-organizing prison labor infrastructure to enforce this new law.

KEY FACTS

- New York State prisons require prisoners to perform labor at a wage of $0.10 to $0.33, and withhold as much as 80 percent of the paid wage for “legal financial obligations,” such as taxes, restitution, and room and board.

- According to the Urban Institute’s Justice Policy Center, in-prison job readiness and work release programs are helpful but have limited availability.

- Most of the 2,220,300 prisoners in the U.S. work directly for the state to maintain the prisons in which they are confined. Only 6 percent of state prisoners and roughly 16 percent of federal prisoners are incarcerated by and work for private companies.
ENDNOTES

3 Ibid.
4 Bushway, “Reentry and Prison Work Programs.”
8 Ibid.
10 Kovensky, “It’s Time to Pay Prisoners the Minimum Wage.”
11 Bushway, “Reentry and Prison Work Programs.”
12 Ibid.
14 Kovensky, “It’s Time to Pay Prisoners the Minimum Wage.”
19 Bushway, “Reentry and Prison Work Programs.”
20 Kovensky, “It’s Time to Pay Prisoners the Minimum Wage.”