

**Public Authority and Private Prisons: How Private Prison Labor Contributes
to National Employment Precarity**

Kaitlyn Oder

A Senior Thesis submitted in partial fulfillment of the requirements for the degree of Bachelor of

Arts in International Political Economy

University of Puget Sound

May 7, 2019

ABSTRACT

Private uses of prison labor are illegal internationally, and not without reason. A lack of public oversight and regulations of wages mean that prison labor is often exploited in exchange for increased profitability for private prisons and sometimes the private companies they contract with. This paper will explicate the ways in which private uses of prison labor contribute to wage and employment precarity and ultimately cost numerous non incarcerated low wage individuals in the United States their jobs and livelihoods. It offers potential policy solutions and paths forward for new research to better link the sociological and economic considerations of this issue.

TABLE OF CONTENTS

INTRODUCTION	5
A REVIEW OF THE LITERATURE.....	8
PRIVATE PRISON LABOR IN THE UNITED STATES.....	8
<i>Public to Private Prison Labour- The Historical Perspective</i>	<i>9</i>
<i>Modern Justifications for Private Prison Labour</i>	<i>10</i>
<i>Inmate Wages, Rights, and Standards Within Private Prisons</i>	<i>12</i>
PRECARIOUS EMPLOYMENT	14
ISSUES OF INTERNATIONAL LEGALITY OF PRIVATE PRISONS.....	16
<i>Textual Analysis of Convention 29.....</i>	<i>17</i>
<i>Justifications for the ILO Forced Labour Convention</i>	<i>18</i>
<i>Enforcement</i>	<i>20</i>
CONCLUSIONS	21
CASE STUDIES	22
TENNESSEE: TENNIER INDUSTRIES	24
WASHINGTON STATE: MICROJET AND TALON INDUSTRIES	26
TEXAS, OREGON, WISCONSIN, AND BEYOND.....	28
ANALYSIS: HOW DID WE GET HERE?.....	33
UNDERSTANDING HOW PRIVATE PRISON LABOR PROMOTES ITSELF POLITICALLY	34
PUBLIC OUTRAGE, IGNORANCE, AND PATHS FORWARD.....	36
POTENTIAL SOLUTIONS.....	37
POLICY RECOMMENDATIONS	38
EXPLORATORY CONCLUSIONS	39
BIBLIOGRAPHY	41

LIST OF ABBREVIATIONS

ILO	International Labor Organization
CCA	Corrections Corporation of America
FLSA	Fair Labor Standards Act
OSHA	Occupational Safety and Health Administration
FPI	Federal Prison Industries
UNICOR	Trade Name for FPI
GAO	Government Accountability Office
HUBZones	Historically Underutilized Business Zones
DOD	Department of Defense
ALEC	American Legislative Exchange Council

Introduction

Ethical consumption is an ever increasing trend in modern consumerism in the United States. Movements towards fair trade or local production are wide sweeping, and boycotts of companies found to use unethical sources of labor abroad are increasingly common. However, what many do not realize is the extent to which the goods they utilize on a daily basis are made through unethical practices. Supply chains are necessarily muddled by the global economy, and truly tracking where products come from is difficult in an ever globalizing world. For some, this creates a drive towards domestically produced products, as there is an expectation that goods produced in the United States are held to higher standards and contribute to job growth at home. What many individuals fail to account for in this ethical comparison is the substantial amount of prison labor used in the production of domestic goods.

The United States is five percent of the global population, yet holds nearly twenty percent of the world's prison population, meaning that one in five incarcerated individuals in the world are in the United States.¹ There are 2.2 million individuals currently incarcerated, representing a near doubling since the 1990s and a quadrupling since the 1980s, largely as a result of the war on drugs.² Ten percent of these inmates are incarcerated in private prisons, or prisons that are independently owned and operated and who contract with the United States federal and state governments.³ The United States largely expanded into privately contracted prison labor around the same time incarceration was increasing and private prisons were first being introduced.⁴

¹ Davis, Angela. *Are Prisons Obsolete?* New York: Seven Stories Press, 2003: 11.

² Quigley, William. "Prison Work, Wages, and Catholic Social Thought: Justin Demands Decent Work for Decent Wages, Even for Prisoners", *Santa Clara Law Review*. 2004: 1159.

³ Aman, Alfred & Greenhouse, Carol. "Prison Privatization and Inmate labor in the Global Economy: Reframing the Debate over Private Prisons", *Maurer School of Law: Indiana University*, 2015: 382.

⁴ Kang, Susan. "Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States", *John Jay College of Criminal Justice, New Political Science*, 2009: 155.

Incarceration at such a large scale was expensive, and inmate labor and private prisons were considered ways that the government could offset increasing costs.⁵

The effects of this expansion was the advent of the prison industrial complex, a system of private actors who systematically were able to profit off of the existence of private prisons themselves as well as the contracted labor incarcerated individuals performed.⁶ As a result, prisoners have been tasked with producing goods and services for a myriad of private companies including AT&T, Boeing, Revlon, Starbucks, Eddie Bauer, Target, McDonalds, Microsoft, Nordstrom, Kmart, JC Penny, Toys ‘R’ Us and many more companies.⁷ Many U.S. individuals have likely purchased goods made by prisoners, have talked on the phone with call centers staffed by prisoners, or have eaten produce prisoners have grown completely unknowingly.⁸ What is the most troubling is that this labor is largely unregulated and unpaid or underpaid. Inmates generally receive substantially less than minimum wage for a day’s labor, and some of that money may be withheld by the state in order to cover incarceration costs, meaning in some cases incarcerated individuals may make less than \$1 an hour for their labor.⁹ There are also fairly low if any regulations within private prisons, with few hourly maximums, no sick or other time off, no workplace safety federal oversight, and the potential for loss of privileges such as visitation rights if prisoners refuse to work. In some states, prisoners who refuse to work can even face solitary confinement as a punishment.¹⁰

Private prison labor’s general lack of regulation as well as the remarkably low wages prisoners are paid make it very easy to exploit. Minimum wage, forty hour weeks, full benefits

⁵ Ibid.

⁶ Davis, Angela. *Are Prisons Obsolete?* New York: Seven Stories Press, 2003: 12.

⁷ Young, Cynthia. “Punishing Labor: Why Labor Should Oppose the Prison Industrial Complex”, *New Labor Forum*, 2000: 4-6.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

packages, overtime, and the costs of maintaining work sites are all non-existent when a private company chooses to contract with prison labor instead.¹¹ This necessarily makes prison labor the logical choice for many companies looking to cut labor costs in an ever globalizing world. Menial labor pushed on to prisoner's being paid low wages as opposed to workers that are not incarcerated and making minimum wage substantially shift job markets and jobs away from those low wage workers. For example, once Victoria's secret can shift sewing jobs out of minimum wage paying factories and into private prisons, they are able to produce substantially more for much less with the added bonus of not having to do nearly as much due diligence on workplace safety regulations, provide benefits, or even supervise labor in many instances. At the same time, US corporations who choose to use private prison labor domestically get the benefit of sales increases from being able to say "made in the USA" as well as breaks in transportation costs and fees for bringing products made abroad back to the United States to assemble, package or sell.

Furthermore, this labor, in many ways is self-propagating. The prison will replicate itself as long as it is profitable. Private prisons save the United States substantial amounts of money housing and feeding incarcerated individuals.¹² America is constructing new prisons at substantial rate, because they are no longer just a function of the state to dissuade crime and to protect the public: they are a business, and a profitable one at that. What is really at stake here is the propagation and profiting of prisons at the expense of low wage workers. This paper will argue that private prisons and companies alike are able to utilize prison labor for economic and political benefit, causing increases in labor precarity for non-incarcerated low wage American workers.

¹¹ Ibid.

¹² Ibid.

A Review of the Literature

This literature review is a broad discussion of the current state of prison labor in private institutions, an analysis of wage precarity and insecurity in the United States, and a legal analysis of the International Labor Organization's Convention on Forced Labour. There have not been many substantive studies involving all three subfields, however they are all intrinsically related. Prison labor in private institutions is not only prohibited by international law, but prohibited specifically because of its potential effects on the free market. Many scholars believe that prison labor contributes to wage precarity as incarcerated individuals work for inadequate wages that allow private corporations to potentially monopolize markets. Essentially, when corporations are able to pay incarcerated workers less than minimum wage, it creates unfair competition for non-incarcerated lower waged labor forces. This literature review is an exploration of the ways in which these three fields are interrelated in order to better explicate the ways prison labor may contribute to labor precarity.

Private Prison Labor in the United States

The modern state of private prison labor in the United States is substantial, at times harmful, and has been justified throughout American history in a myriad of different ways. Private prisons can be defined as “for profit businesses that build and/or manage prisons for local, state, and federal governments.¹³” The majority of inmates housed in modern private prisons are managed by two corporations, the Corrections Corporation of America (CCA) and the GEO Group. These prisons operate either on a contract basis by managing existing public facilities, or through independent facilities built, managed, and run by the private entities themselves.¹⁴ They house thousands of inmates combined, with the most recent Department of

¹³ Selman, Donna & Leighton, Paul. Punishment For Sale 2010.

¹⁴ Ibid.

Justice data suggesting that 130,941 inmates were being held in private prisons in 2011, an increase of nearly double over the ten years the data was taken.¹⁵ Data also suggests that private prisons are highly profitable, with annual revenues of the two corporations in 2010 surpassing \$2.9 billion.¹⁶ This increase in population over time is of particular relevance, especially when considering the profit motive these private corporations likely have. The first section of the literature review explores the historical and modern justifications for private prisons, creating an understanding of their prevalence throughout American history, as well as analyze the ways in which wages, treatment, and standards are maintained within private prisons.

Public to Private Prison Labour- The Historical Perspective

Throughout American history, there has been much consensus among academics that there is some benefit to prison labor. William Quigley (2004) argues that there are “moral, just, family, and practical reasons to offer work opportunities [to prisoners].”¹⁷ He notes that in the 1800s that many thought labor in prisons was beneficial because it taught prisoners life skills and could have some reformatory benefit—a sentiment that continues to this day.¹⁸ However, Quigley argues that prison privatization had some effect on these attitudes. He writes: “Within a few decades, however, the motive to make money emerged as the primary goal of prison labor and the privatization systems of contract convict labor and convict leasing became the dominant models...”¹⁹ It became clear that public awareness about how private models of prisons had disadvantages distinct from public institutions was on the rise. Cox and Meiners (2001) argue

¹⁵ Milman-Sivan, Faina. “Prisoners For Hire Towards a Normative Justification of the ILO’s Prohibition of Private Forced Prisoner Labor”, University of Haifa, Fordham International Law Journal, 2013: 1619-1681.

¹⁶ Ibid.

¹⁷ Quigley, William. “Prison Work, Wages, and Catholic Social Thought: Justin Demands Decent Work for Decent Wages, Even for Prisoners”, Santa Clara Law Review. 2004:1162.

¹⁸ Ibid.

¹⁹ Ibid.

that as it became apparent that private prisons were profit driven, opposition grew in the form of businesses and trade unions.²⁰ Quigley furthers this argument, writing that competition with low wage labor, as well as heightened manufacturing costs were key concerns for business owners.²¹ One weakness of both pieces is that they fail to discuss at length the human costs of these privatized labor policies at any length. Undoubtedly there are consequences for incarcerated individuals in private prisons as there are often no regulations of conditions, and they are subject to being leased out to other private corporations for labor.²² Cox and Meiners do briefly mention that convict labor was often wrought with “cruel treatment,” and later in the piece discuss modern wage discrepancies among prisoners. Quigley continues that disapproval from businesses and trade unions ultimately led to the decline of private prison labor as laws were passed to prevent the interstate travel of goods produced by prisoners working for private firms. He notes, however that along with the re-emergence and substantial growth of private prisons in the 1980s (due in large part to the war on drugs substantially increasing prison populations) came the Prison Industry Enhancement Act, which allowed private firms to resume contract work with prisoners and ship goods across the country.²³ It would seem that the historical justifications for prison labor—both private and public—were substantial enough to overcome potential concerns, and ultimately change policy within the United States over time.

Modern Justifications for Private Prison Labour

Today there are several justifications for the modern adoption of private prisons and the labor that occurs within their walls. According to Donna Selman and Paul Leighton, in the 1980s

²⁰ Cox, Charles & Meiners, Roger. “Private Employment of Prison Labor”, *Journal of Private Enterprise*, 2001.

²¹ Quigley, William. “Prison Work, Wages, and Catholic Social Thought: Justin Demands Decent Work for Decent Wages, Even for Prisoners”, *Santa Clara Law Review*. 2004: 1162

²² *Ibid.*

²³ *Ibid.*

and 90s there was substantial pressure on politicians from both private enterprises and the public to adopt stances that were both tough on crime and less reliant on government.²⁴ Consequently, this period of time led to substantial growth in the incarcerated prison population.²⁵ Alfred Aman and Carol Greenhouse concur that tough on crime attitudes are what lead to prison overcrowding during the 90s due to heightened penalties for non-violent drug offenders.²⁶ Selman and Leighton build on this line of reasoning, writing: “their solution, privatization, fit with the attack on the government’s handling of public service, the fervent belief in the power of free markets, and the dominant discourse suggesting that more incarceration was the only answer to the crime problem.”²⁷ Overcrowding, demand for less government involvement in all aspects, and tough on crime attitudes have all been conceptualized as justifications for the re-emergence and growth of the private prison industry.

Another justification for both private prisons and their labor is that it is simply cheaper than public prisons. Quigley notes that this is a common rationale for the adoption of private prisons, with several authors making the claim that public institutions are simply less efficient.²⁸ However, several studies have indicated that the justification of efficiency is not sufficient: “a 2001 report under the auspices of the Bureau of Justice Assistance indicate that the cost differential between private and public prisons is minimal.”²⁹ Camp and Gaes posit that in cases where costs prove to be minimal, savings may not come from the efficacy of the private

²⁴ Selman, Donna & Leighton, Paul. *Punishment For Sale* 2010: 56.

²⁵ Camp, Scott & Gaes, Gerald. “Growth and Quality of U.S Private Prisons: Evidence from a National Survey”, Federal Bureau of Prisons Office of Research and Evaluation, 2001.

²⁶ Aman, Alfred & Greenhouse, Carol. “Prison Privatization and Inmate labor in the Global Economy: Reframing the Debate over Private Prisons”, Maurer School of Law: Indiana University, 2015: 378.

²⁷ Selman, Donna & Leighton, Paul. *Punishment For Sale* 2010: 56.

²⁸ Quigley, William. “Prison Work, Wages, and Catholic Social Thought: Justin Demands Decent Work for Decent Wages, Even for Prisoners”, *Santa Clara Law Review*. 2004: 1162.

²⁹ Aman, Alfred & Greenhouse, Carol. “Prison Privatization and Inmate labor in the Global Economy: Reframing the Debate over Private Prisons”, Maurer School of Law: Indiana University, 2015: 374.

institutions themselves, but rather the savings they get from paying lower wages (both to inmates and guards), fewer staff, cheaper food, and many more factors.³⁰ Both of these examples serve to disprove the common narrative posited by Quigley.

Inmate Wages, Rights, and Standards Within Private Prisons

Prisoners definitionally do not have substantial rights while incarcerated. However there are some ways which private prisons undermine these rights substantially more than public institutions. Prisoners are generally required to work and often do so both with or without pay.³¹ Quigley argues that the Fair Labor Standards Act, which requires workers be paid a minimum wage in the United States, is “silent as to the coverage of prison labor,” and that “prisoners have no constitutional right to be paid at all for the work they are forced to perform.”³² However, the matter of coverage under the act is contested when it comes to privately operated or contracted facilities.³³ Private prison inmates are not protected in any capacity as the Fair Labor Standards Act does not contest how private employers manage inmate employees.³⁴ One weakness of the piece, however, is that the justification for how private and public prisoners are treated differently under the Act are not substantially well developed. Atman and Greenhouse explain that discrepancies in wages and conditions exist between private and public prisons: “...government and private companies are held to different accountabilities and rationales; they are also subject to different formulations of success.”³⁵ For these reasons, Dolovich argues that

³⁰ Camp, Scott & Gaes, Gerald. “Growth and Quality of U.S Private Prisons: Evidence from a National Survey”, Federal Bureau of Prisons Office of Research and Evaluation, 2001: 2.

³¹ Quigley, William. “Prison Work, Wages, and Catholic Social Thought: Justin Demands Decent Work for Decent Wages, Even for Prisoners”, Santa Clara Law Review. 2004: 1165-67.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Aman, Alfred & Greenhouse, Carol. “Prison Privatization and Inmate labor in the Global Economy: Reframing the Debate over Private Prisons”, Maurer School of Law: Indiana University, 2015: 404.

outcomes of treatment also differ between the two.³⁶ He further contends that guard training, standards imposed, and inadequate investments are all factors in the different ways prisoner outcomes might differ and potentially be worse for private company inmates.³⁷ Cynthia Young furthers Dolovich's argument, noting that private prison labor operates outside of US employment standards that have been fought for:

Prisoners cannot quit, call in sick, leave early, take vacation time, or earn a pension. They are also exempt from daily work-hour maximums, so they often must work as long as the employer wants. Refusal to work is punished by the revoking of privileges such as visits from or calls to family members and access to the prison store. In California, if inmates decline to work, they can even be moved to solitary confinement.³⁸

Her argument bolsters that of Atman & Greenhouse who write that standards that government institutions are held to are often ignored within the confines of private prisons.³⁹ Occupational Health and Safety Administration (OSHA) regulations, fair wages, and adequate worker representation are difficult to find and rarely enforced within prisons in general, but to a substantially larger extent in private prisons themselves.⁴⁰ The utter lack of regulations and the severity of working conditions are shocking, and essentially create a labor force unburdened by regulations that seek to reduce the potential harms of employment.

³⁶ Dolovich, Sharon. "State Punishment and Private Prisons", *Duke Law Journal*, 2005: 483.

³⁷ *Ibid.*

³⁸ Young, Cynthia. "Punishing Labor: Why Labor Should Oppose the Prison Industrial Complex", *New Labor Forum*, 2000: 6.

³⁹ Aman, Alfred & Greenhouse, Carol. "Prison Privatization and Inmate labor in the Global Economy: Reframing the Debate over Private Prisons", *Maurer School of Law: Indiana University*, 2015: 404.

⁴⁰ Young, Cynthia. "Punishing Labor: Why Labor Should Oppose the Prison Industrial Complex", *New Labor Forum*, 2000: 4.

Precarious Employment & Prison Labor

The link between precarious employment and the utilization of prison labor has been established to a limited extent in the literature, with authors arguing that prison labor has the potential to create adverse outcomes to non-incarcerated individuals in precarious job positions. Precarious labor is a somewhat ambiguous term, but which generally refers to the insecurity many low wage workers face in their day to day lives due to the threat of joblessness. Sharryn Kasmir defines precarity as denoting “a general, pervasive ontological condition of vulnerability, displacement, and insecurity...”⁴¹ According to the Bureau of Labor Statistics nearly 21.6 million employees work in precarious situations.⁴²

Kang argues that laborer precarity and prison labor are intrinsically linked due to the stresses that prison labor brings to the low wage market sphere.⁴³ Kasmir concurs, writing “Today, forced, bonded, and imprisoned laborers provide services and produce consumer goods, while 1.6 million people live in multidimensional poverty...”⁴⁴ Linus Nilsson also agrees with this logic, citing the ways in which private prison companies can take advantage of the free market through cheap labor: “...protects free workers market, and, if the prison produces goods for sale on the open market, there is a problem with unfair competition. Businesses that comply with fair conditions and standards at work cannot compete with prisons which do not pay for their prisoner’s work.”⁴⁵ As Cynthia Young argues, “why should corporations pay union-scale or

⁴¹ Kasmir, Sharryn. “Precarity”, Cambridge Encyclopedia of Anthropology, 2019.

⁴² Moody, Kim. “The State of American Labor.” Jacobin. 2016.

⁴³ Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, John Jay College of Criminal Justice, New Political Science, 2009.

⁴⁴ Kasmir, Sharryn. “Precarity”, Cambridge Encyclopedia of Anthropology, 2019

⁴⁵ Nilsson, Linus. “Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners”, Lund University, 2017.

living wages when they can pay pennies a day to inmates behind bars?”⁴⁶ She expands on Nilsson’s argument about working conditions by extrapolating that these conditions contribute to corporate preferentialism. The lack of labor unions, limited hour work weeks, arbitration, OSHA standards, and general benefits make prison labor substantially more attractive to companies needing to source low wage unskilled jobs.⁴⁷ According to economist Gordon Lafer, this is because the very metric of a private prison relies on operating facilities for “less than what the state pays them” and then, to turn a profit, “contract prisoners out to private enterprises” for low wages.⁴⁸ Many argue that this discrepancy in wages is the driving factor behind prison labor’s impact on wage precarity in the United States. As one article argues, “...low wage prisoners undermine competitive unskilled and semi-skilled labor markets and decrease living standards of those who remain employed by reducing wage rates. Unskilled or semi-skilled laborers would be the most at risk since most prison jobs are unskilled or semi-skilled.”⁴⁹ In other words, if unskilled and semi-skilled prisoners are able to do the same jobs for the same companies for lower wages than non-incarcerated individuals, those non-incarcerated individuals are likely to lose their jobs.⁵⁰ Ultimately what this line of argumentation serves to prove from these authors is that first, there is a precarious working class facing joblessness on an everyday basis; that prison labor’s draw to private industry via low wages, to some extent contributes to precarity.

⁴⁶ Young, Cynthia. “Punishing Labor: Why Labor Should Oppose the Prison Industrial Complex”, *New Labor Forum*, 2000: 2.

⁴⁷ *Ibid.*

⁴⁸ Lafer, Gordon. “Captive Labor: America’s Prisoners as Corporate Workforce” *American Prospect*, 1999: 67.

⁴⁹ Derrick, Frederick et. al. “Prison Labor Effects on the Unskilled Labor Market”, *American Economist*, 2004: 76.

⁵⁰ *Ibid.*

Issues of International Legality of Private Prisons

International law surrounding the regulation of prison labor, and by extension prisoner rights, is not substantially well developed. The primary international regulation surrounding prison labor is the International Labor Organization Forced Labour Convention No. 29, which was ratified in 1930 and explicates what types of labor qualify as forced or coerced. The International Labor Organization (ILO) defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁵¹ Upon first glance the convention implies that prison labor, which is often compulsory, qualifies as forced, and is therefore illegal labor.⁵² However, as Linus Nilsson argues, prisoners are exempt from this definition as a later article within the convention explicitly excludes prisoners and their labor from normative definitions of forced labor itself.⁵³ Article two, section C explicates that prison labor is one condition that is exempt from being considered forced labor:

Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations[...].⁵⁴

Most relevantly, this article makes the distinction between private and public forms of prison labor and dictates that prisoners must carry out work under the “supervision and control” of a public authority.⁵⁵ Private prisons, and the labor that occurs within their walls are therefore

⁵¹ Nilsson, Linus. “Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners”, Lund University, 2017.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ International Labour Organization. “ILO Forced Labour Convention Number 29”, 1930.

⁵⁵ Ibid.

necessarily in violation of ILO standards, as well as those public prisons that have labor arrangements with private corporations.⁵⁶

Textual Analysis of Convention 29

The nature of the International Labor Organization Convention on Forced Labour indicates that there are significant constraints on private prisons and private enterprise within prisons. These constraints mean that several states, including the United States, Australia, the United Kingdom and many more are arguably in violation of international law. Susan Kang writes: “The United States’ domestic policies not only contradict its foreign policies, but also violate its international legal obligations. Specifically, they violate the International Labor Organization’s Convention on the elimination of forced labor.”⁵⁷ Also demonstrative of this argument, Swepston argues is that America has failed to ratify convention 29, making it only one of nine countries to do so.⁵⁸ The lack of compliance on the part of states, and more specifically the United States, is not substantially contested by most authors. However, attempts at understanding the nature of violations are very present in the literature.

Convention 29 itself has undergone significant textual scrutiny with committees being formed by the ILO over the years to establish what the best and most relevant interpretation of the language of the convention is.⁵⁹ However, many authors have slightly different understandings of what the agreement actually says. Though “private enterprise” is fleshed out in the convention as “private individuals, companies, or associations,” there is some dispute over what the language actually means. Nilsson argues that private prisons are included in definitions

⁵⁶ Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, John Jay College of Criminal Justice, *New Political Science*, 2009: 139.

⁵⁷ *Ibid.*

⁵⁸ Swepston, Lee. “Prison Labour and International Human Rights.” 2001.

⁵⁹ *Ibid.*

of private enterprises and therefore “the supervision and control of a public authority also proves to be problematic for privately owned prisons, since they are, by pure definition, not public.”⁶⁰

What can be agreed upon is that the convention accomplishes two things in its language: it creates a “distinction between private and public,” and “affords better protection to prisoners working for private enterprise.”⁶¹

Justifications for the ILO Forced Labour Convention

The International Labor Organization faced difficulties when determining which forms of prison labor to classify as forced. Kang argues that the normative justifications for prison labor (such as labors rehabilitative effects and potential recidivism rate reductions) are what ultimately persuaded the Organization to only prohibit explicitly private uses of prison labor.⁶² The ILO did not fundamentally disagree that prison labor could be useful, both to states and to incarcerated individuals.⁶³ Though that is not to say that there was not substantial concern over the potential consequences of allowing prison labor to be propagated by figures that were not the state.⁶⁴ Milman-Sivan conceptualizes the justifications for Convention 29 as two separate schools of thought: one being abuse of power arguments, the other being market based arguments. Abuse of power arguments have to do with the potential for exploitation of prisoners as there is a tendency for private actors to be profit seeking, rather than concerned about the well-being of prisoners in

⁶⁰ Nilsson, Linus. “Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners”, Lund University, 2017.

⁶¹ Milman-Sivan, Faina. “Prisoners For Hire Towards a Normative Justification of the ILO’s Prohibition of Private Forced Prisoner Labor”, University of Haifa, *Fordham International Law Journal*, 2013: 1619-1681.

⁶² Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, *John Jay College of Criminal Justice, New Political Science*, 2009.

⁶³ Nilsson, Linus. “Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners”, Lund University, 2017.

⁶⁴ Milman-Sivan, Faina. “Prisoners For Hire Towards a Normative Justification of the ILO’s Prohibition of Private Forced Prisoner Labor”, University of Haifa, *Fordham International Law Journal*, 2013: 1629.

their care.⁶⁵ Kang furthers this argument, indicating that instead of saving the state money, private companies simply absorb profits gained through cheaper inmate labor.⁶⁶

Unlike Kang, Milman-Sivan believes that the standard abuse of power justification is ideologically weak, and often becomes a reduction to a type of moral shaming; profits will be sought after, regardless of private or public affiliation.⁶⁷ She cites market pressures as a secondary set of justifications, calling it the “competition rationale.” Her argument essentially states that private prison labor can contaminate the already public market that exists, therefore making the potential for exploitation of the private prisoners an attractive idea.⁶⁸ Nilsson expands on this idea, stating that the convention “...protects free workers market, and, if the prison produces goods for sale on the open market, there is a problem with unfair competition. Businesses that comply with fair conditions and standards at work cannot compete with prisons which do not pay the same for their prisoner’s work.”⁶⁹ Kang seems to confer that this argument is relevant, particularly on an international scale. She argues that a sort of “race to the bottom” where states continuously lower wages to remain competitive, could be detrimental to the global economy and to the rights of all workers beyond prisoners.⁷⁰ In 1998, an ILO Conference Committee discussing the ways in which Convention 29 standards should be applied seemed to agree that there was a risk of Kang’s proposed race to the bottom. They argued that it was

⁶⁵ Ibid.

⁶⁶ Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, John Jay College of Criminal Justice, *New Political Science*, 2009: 147.

⁶⁷ Milman-Sivan, Faina. “Prisoners For Hire Towards a Normative Justification of the ILO’s Prohibition of Private Forced Prisoner Labor”, University of Haifa, *Fordham International Law Journal*, 2013: 1624-25.

⁶⁸ Ibid.

⁶⁹ Nilsson, Linus. “Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners”, Lund University, 2017: 36.

⁷⁰ Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, John Jay College of Criminal Justice, *New Political Science*, 2009: 142.

apparent that private prisons and companies could exploit prison labor through paying prisoners wages far below the federal minimum.⁷¹ Kang's work agrees with these ILO findings; she argues that violation of Convention 29 has direct impacts on both domestic and international economies. She writes that in the United States "the use of prison labor directly threatens job security, wages, conditions, and the strength of unions."⁷² Kang argues that justifications for this claim are two-fold. First, international pressures through a normalized use of private prison labor drive all wages down internationally. This same effect is then replicated domestically in the United States. As deindustrialization has occurred and forced jobs abroad, "private actors' access to prison labor grants these companies access to a low-wage, disciplined labor force without the added costs of overseas production."⁷³ This implies that beyond the pressures American labor faces from offshoring, those remaining low wage, unskilled jobs are then filled by prisoners due to the low wages corporations facing global pressures can get away with paying them.⁷⁴ Her argumentation is key as it frames wage precarity in the United States and abroad as intrinsically linked to the increase of private prison labor in Western states.

Enforcement

Given arguments such as Kang's that indicate the United States and potentially other actors are in violation of Convention 29, many authors have attempted to understand why there have been no consequences. Much debate boils down to a question as to the efficacy of the enforcement mechanisms that the International Labor Organization possesses. Kang writes that the ILO "does not have strong enforcement mechanisms," and that there are no potential

⁷¹ Swepston, Lee. "Prison Labour and International Human Rights." 2001.

⁷² Kang, Susan. "Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States", John Jay College of Criminal Justice, New Political Science, 2009: 148-150.

⁷³ Ibid.

⁷⁴ Ibid.

ramifications that serve as deterrents to state actions.⁷⁵ Nilsson explains that the process of enforcement involves states filing reports against one another, and those reports being brought to the ILO. If there is no action taken at that point, the case goes to the International Court of Justice for a ruling.⁷⁶ Although, he notes that this rarely occurs due to a lack of reports being followed, and due to state's willingness to at least appear to acquiesce to the ILO.⁷⁷

Extrapolating from the literature base it is therefore understandable that there have been few ramifications for state's failure to be held responsible for potentially violating international law.

Conclusions

The main findings of this review are that there are definite connections between private prisons, wage precarity, and matters of international legality. The solidification of causal links between wage precarity and specifically private prison labor, comprehensive data on the extent and scope of prison labor after 2012, and data on prison labor's impact are all lacking in the current literature base. Further work could help to answer the questions posited by this paper more comprehensively, however the information provided has allowed this literature review to solidify its findings. It finds that there is relative consensus that private prison labor creates unfair competition with laborers in the free market, as the low wages prisoners receive necessarily corner markets. Additionally, it finds that conditions have the potential to be worse in private institutions due to a myriad of factors. The third section on international legality heavily suggests that the United States, among other states, may be in violation of international law.

⁷⁵ Ibid.

⁷⁶ Nilsson, Linus. "Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners", Lund University, 2017.

⁷⁷ Ibid.

Case Studies

In researching worker precarity's connection to private prison labor, it became apparent that there had been very little data collected connecting the two in meaningful ways. Widespread data about offshoring and immigration's effects on labor in the United States were substantially better developed, likely due to the normalization of those narratives as threats to jobs and the free market. Substantive studies abroad, in other countries that also utilize private prison labor (New Zealand, the United Kingdom, Australia, Canada mainly) were also difficult to come by, and it seemed as though private prison labor in those countries was less normalized than in the United States.⁷⁸ Comprehensive, national data was also not available in the context of the United States, however, the existence of state level prisons yielded far more independent cases of prison labor being documented as detrimental to non-incarcerated laborers.

There seemed to be only one empirical national level study of incarcerated labor's effects on the free market. Its methodology was to use a previous study on immigration's logarithmic equations, factoring in specific elasticities associated with prison labor. This methodology, however, seemed suspect to me as there is little analysis or explanation as to why the authors feel immigration is comparable enough to prison labor to use the same equations to study both. This study found that prison labor did actually reduce employment levels, finding that "the 85,432 prisoners currently employed reduce free employment by between 33,503 and 51,254 jobs..."⁷⁹ This seemingly confirms the hypothesis that prison labor contributes to labor precarity, however, the authors of this study conclude that the market shock from prison labor is not substantially

⁷⁸ Nossal, Kim & Wood, Phillip. "The Raggedness of Prison Privatization: Australia, Britain, Canada, New Zealand and the United States Compared," Queen's University, 2004.

⁷⁹ Derrick, Frederick et. al. "Prison Labor Effects on the Unskilled Labor Market", American Economist, 2004: 78-79.

different from other shocks the market has already faced.⁸⁰ Even in this case, which has methodology that seems to be questionable, and is the only aggregate study, the empirical data would seem to bolster the idea that job loss and precarity are caused to some degree by private prison labor. This is significant because even if the author's conclusions do not support the idea that prison labor produces unique effects, their data would seem at a basal level to back this idea.

Case studies would seem to give substantially more insight into the ways prison labor directly contributes to worker precarity, as there are dozens of examples of this link as opposed to a singular empirical analysis. Qualitative analysis through a series of case studies should give a more comprehensive idea of the scope of prison labor. Even if that scope is limited, as the above study indicates it may be, it allows for a better understanding of the specific conditions which lead to worker insecurity after private entities contract with prison labor. Knowing that between 30 and 50 thousand jobs were lost during the period Derrick's study analyzed is important, however, understanding how those job losses occurred is important as well.⁸¹ The case studies chosen here are two of numerous qualitative examples, however these were chosen particularly for the quality of their documentation. Each of the two main case studies analyzed here have been through legal proceedings regarding claims of infringement on the free market and workers' rights. Due to a lack of financial or legal resources, many of these cases, particularly smaller ones, are not well documented and lack substantive data on their own, often coming from very small news outlet stories. Therefore, in addition to the two case studies, an analysis of smaller cases taken in conjunction with one another will be analyzed. These case studies and their subsequent analysis should provide some degree of understanding of how wage precarity and prison labor are more concretely interconnected.

⁸⁰ Ibid.

⁸¹ Ibid.

Tennessee: Tennier Industries

One of few well documented cases of private sector jobs being lost to prison labor is the case of Tennier Industries, a Tennessee based clothing production company. Their contract was initially with the Department of Defense to produce \$45 million worth of textiles. However, they ultimately lost their long held contract to the Federal Prison Industries (FPI) (a subsidiary of UNICOR), a government owned corporation that works to contract prisoner's labor.⁸² FPI was able to quote higher production yields for lower costs as a result of the wages they were paying their incarcerated employees. The average prisoner on this project was making between \$0.23 and \$1.15 per hour of labor compared to the federally mandated minimum wage of \$7.25.⁸³ After losing their contract, Tennier had to lay off over 100 workers; 100 individuals who otherwise would have had full time employment.⁸⁴

Tennier filed a protest with the US Government Accountability Office (GAO) arguing that the DOD violated a provision designed to allow small businesses in Historically Underutilized Business Zones (HUBZone) to better compete for government contracts.⁸⁵ This provision in theory allows for economic development in areas that have not historically been strong business centers, and to reward small businesses for starting up in areas that need economic stimulus.⁸⁶ Tennier was one such small business.⁸⁷ The GAO ultimately decided that

⁸² Taylor, Jennifer Rae. "Constitutionally Unprotected: Prison Slavery, Felon Disenfranchisement, and the Criminal Exception to Citizenship Rights," *Gonzaga Law Review*, 2010.

⁸³ Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," *Prison Legal News*, 2012.

⁸⁴ *Ibid.*

⁸⁵ United States Government Accountability Office. "Decision in the Matter of Tennier Industries," File B-403946.2, Washington DC, 2012.

⁸⁶ *Ibid.*

⁸⁷ Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," *Prison Legal News*, 2012.

the Federal Prison Industries were not required to adhere to HUBZone requirements and that no statutes had been violated by FPI acquiring the contract.⁸⁸ The GAO writes:

The agency received 9 proposals, including Tennier's and FPI's [...] According to the protester, allowing FPI to compete defeats the purpose of the Historically Underutilized Business (HUBZone) Act of 1997 [...] we conclude that DLA's decision to permit FPI to compete under the solicitation did not violate a procurement statute or regulation.⁸⁹

Essentially, this decision is indicative of a much larger problem as it pertains to the legality of competition. Government agencies are allowed to offer contracts to the lowest bidder (generally FPI) as long as items acquired are comparable in "price, quality, and time of delivery."⁹⁰

However, the moment that they are not comparable in only one of those areas, agencies are required to implement "fair opportunity" in competing contracts, thereby allowing the lowest bidder to take the contract as long as the items produced are of comparable quality and time of production and delivery.⁹¹ This particularity is what causes the most difficulties for companies trying to compete with FPI. If prisoners are allowed to be paid substantially lower than minimum wage for the same amount of labor, they are able to produce goods for FPI that are of the same quality and time to produce, but are substantially cheaper.⁹² This disallows private sector competition from the very start. It is even more difficult when government agencies are "encouraged to purchase FPI supplies and services to the maximum extent practicable."⁹³

Ultimately, this occurs in dozens of cases where various government agencies are able to bypass

⁸⁸ United States Government Accountability Office. "Decision in the Matter of Tennier Industries," File B-403946.2, Washington DC, 2012.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," Prison Legal News, 2012.

⁹³ United States Government Accountability Office. "Decision in the Matter of Tennier Industries," File B-403946.2, Washington DC, 2012.

contracting assistance policies designed to encourage economic growth. Instead, they focus inwards on a pseudo public corporation that uses prison labor to minimize cost and ultimately to make a profit.⁹⁴ Furthermore, FPI itself actively acknowledges this truth, writing that they must function as a business and make profits in order to sustain operations and to expand them to new customers.⁹⁵ They do however, fail to acknowledge the effects that profit seeking may have on private sector employment. Tennier's CFO, Steven Eisen, summarizes the frustrations his and other private companies feel towards having to compete with FPI and other prisoner contracting programs: "Our government screams, howls and yells how the rest of the world is using prisoners or slave labor to manufacture items, and here we take the items right out of the mouths of people who need it."⁹⁶ This case study ultimately creates some degree of understanding that there are consequences to low wage laborers when prison labor is at play. Even in this example, which demonstrates a public agency (the Department of Defense) seeking a contract in circumstances where FPI has already been given preferential treatment in other deals, the cost discrepancy in production and other factors was insurmountable for private laborers to be able to adequately compete.⁹⁷

Washington State: Microjet and Talon Industries

An additional well-documented case is that of Microjet and Talon Industries in Washington state. Microjet Industries (a water jet cutting business) was able to contract with Washington Correctional Facilities and ultimately gained "free access to a 56,000 square foot

⁹⁴ Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," Prison Legal News, 2012.

⁹⁵ UNICOR. "Federal Prison Industries, Inc. 2017 Annual Report," Federal Prison Industries, Inc, 2017: 29.

⁹⁶ Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," Prison Legal News, 2012.

⁹⁷ United States Government Accountability Office. "Decision in the Matter of Tennier Industries," File B-403946.2, Washington DC, 2012.

industrial space, built specifically for private prison industries.”⁹⁸ Being the only water jet company that had such a contract, Microjet was able to create somewhat of a monopoly, earning many of the contracts previously held by other companies.⁹⁹ Talon industries was one such competitor company affected, and it eventually had to close down operations.¹⁰⁰ Rick Trelstad, the owner of Talon Industries said, “his company shut down in 1999 at least in part because Microjet consistently underbid him for work.”¹⁰¹

In 2004, Talon Industries, along with other waterjet companies based in Washington state decided to sue Washington State Correctional facilities: “They argued that Microjet’s free use of a correctional facility’s space and access to cheap labor had given the company an unfair advantage.”¹⁰² The court ultimately decided to rule in favor of the waterjet association, arguing that the advertisement of “lower labor and overhead costs” created an unfair burden on other companies to compete effectively.¹⁰³ The court cited three arguments that the founders of Washington State had originally made against private prison labor: “...fears over the unfair competition to free labor, the conditions of brutality for inmates, and the possible corruption and favoritism [towards certain private interests] associated with private convict labor.”¹⁰⁴ This was a highly significant court decision which decided that private contracting within prisons in this manner was unconstitutional state wide.¹⁰⁵ However, public reactions to this ruling were highly

⁹⁸ Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, John Jay College of Criminal Justice, New Political Science, 2009: 153.

⁹⁹ Schwartzapfel, Beth. “Your Valentine, Made in Prison,” The Nation, 2009.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States”, John Jay College of Criminal Justice, New Political Science, 2009: 153.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Schwartzapfel, Beth. “Your Valentine, Made in Prison,” The Nation, 2009.

negative, mostly due to state prison chief Joe Lehman's public statements about loss of state revenues: "He estimated an annual loss of \$600,000 for covering incarceration costs for the inmates, and a loss of up to \$150,000 for victims' funds."¹⁰⁶ The accuracy of these figures is not widely known, and some authors, including Susan Kang, believe them to be "garnished" in some way, likely from comparing worker wages to those of non-incarcerated workers.¹⁰⁷ Nevertheless, the fear of such significant financial losses to tax payers was enough for the public to vote the private use of prison labor into a constitutional amendment through a ballot initiative in 2007.¹⁰⁸ As Susan Kang argues, this vote demonstrated that the public, politicians, and private interests valued profits and "punishment over protecting vulnerable workers."¹⁰⁹

Texas, Oregon, Wisconsin, and Beyond

There are numerous examples that are not documented well enough to stand on their own, only to be found in one paragraph descriptions in news articles and other popular sources. These are not highly verified, and generally stem from the testimony of one or two individuals impacted by a company's prison labor contracting. These are examples that do not have easily accessible court or agency proceedings, or whose effects never resulted in legal consequences. It can be extrapolated from Gordon Lafer's work on wage precarity that in many cases individuals or small companies simply do not have the resources to file official complaints against job and contract losses.¹¹⁰ These case studies on their own do not yield substantive qualitative data from

¹⁰⁶ Kang, Susan. "Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States", John Jay College of Criminal Justice, *New Political Science*, 2009: 154.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Lafer, Gordon. "Captive Labor: America's Prisoners as Corporate Workforce" *American Prospect*, 1999: 67.

which one could extrapolate an argument, however, combined they do make a compelling case for the scale of worker displacement from prison labor across the United States.

One of the more popularized in media cases is that of Boeing Corporation in Washington State. Boeing is no stranger to labor controversy, and its prison labor controversy in the late 90s is no different. In an effort to save costs, Boeing relocated two Seattle factories: one to China and one to the Washington State Reformatory.¹¹¹ According to one author, conditions were not terribly different in the two new factories:

Employees live right next to the factory premises. They are forbidden to form any type of trade union, much less an independent one. For those who step out of line on the shop floors of Washington prisons, there is the notorious Intensive Management Unit of ‘reeducation through sensory deprivation’ fame¹¹²

Ultimately, this case demonstrates that factories are not unlike forced labor that many Americans often criticize: workers are stripped of association rights, forced to act in strict and particular ways, and must live near their places of work until they become all consumed by the labor they perform. Furthermore, individuals are punished in cruel ways such as solitary confinement for any misstep or failure to perform, likening this instance of prison labor to examples Americans often construct as purely an overseas phenomenon. Beyond this, the shuttering of two factories only to have one be relocated in China demonstrates that similarly to offshoring, companies do seek increased profit margins by outsourcing labor to areas where they can pay lower wages and provide less benefits.¹¹³

¹¹¹ Taylor, Jennifer Rae. “Constitutionally Unprotected: Prison Slavery, Felon Disenfranchisement, and the Criminal Exception to Citizenship Rights,” *Gonzaga Law Review*, 2010: 382-385

¹¹² *Ibid.*

¹¹³ *Ibid.*

Another example is that of Lockhart Technologies in Austin, Texas. Upon contracting with Lockhart Correctional Facilities, the company decided to close its plant in Austin, laying off 130 circuit board assembly workers.¹¹⁴ Lockhart Technologies made this decision after being presented with an offer to have inmates perform work in “a state-subsidized facility on prison grounds for which the company paid just one dollar in rent per year.”¹¹⁵ Lockhart additionally was able to pay inmates minimum wage (often less, realistically, after legalized restitution based wage skimming) and offer no benefits or workman’s compensation, as opposed to the more than \$10 an hour plus benefits those 130 non-incarcerated laborers were making previously.¹¹⁶

The state of Oregon is also wrought with hundreds of examples of prison labor detracting from free market labor. Much of this stems from Oregon’s mandatory prison labor law.¹¹⁷ This mandate from 1994 states that all prisoners should work 40 hour weeks, and encourages correctional facilities to market their labor force to private industries.¹¹⁸ As a result, many administrative public servant type jobs are now being filled by prisoners in Oregon state such as data entry and record keeping.¹¹⁹ However, this mandate has displaced numerous non-incarcerated workers. In one study, it was found that one hundred construction workers lost their jobs when Umatilla prison decided to hire inmates instead.¹²⁰ This is just one of many examples from after the law was adopted:

...thousands of public sector jobs [had] been taken over by prisoners; workers in the private sector [had] been laid off when their firms lost contracts to prison based

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Lafer, Gordon. “Captive Labor: America’s Prisoners as Corporate Workforce” American Prospect, 1999: 67.

¹¹⁹ Ibid.

¹²⁰ Ibid.

industries; and with the cost of supervising a full-time work force, the state for the first time in its history [was] spending more on corrections than on higher education.¹²¹

This scope of this mandate, unfortunately, has not been fully explored in aggregate studies, and the true extent of public and private sector job losses not confirmed. However, simply based on individual reporting and correctional spending increases as discussed above, one can get a pretty good picture of the extent of prison labor displacing jobs in the state of Oregon.

There are infinitely more small and lightly documented cases in existence across the country. The same author who discusses Lockhart and Boeing attempts to put the frequency of these cases into perspective:

In recent years, an Ohio supplier of Honda automobile parts paid inmates two dollars per hour to perform the same work unionized free workers had done for twenty to thirty dollars per hour; an Arizona company closed its unionized slaughterhouse to open a prison operation at much lower cost; and in 1997, within one year of opening a production facility in a Wisconsin prison, the Fabry Glove and Mitten Company's inmate workforce, paid \$5.25 per hour, had grown to 100 while its "free labor force," paid \$11 per hour, had shrunk from 205 to 120. Prison labor is not just a prisoner issue.¹²²

These wage discrepancies are significant, and can represent both great increases in profits for businesses, as well as huge job losses for non-incarcerated workers. Differences of up to \$28 an hour as documented here can greatly increase production yields as well as profit margins. Even if non-incarcerated laborers are willing to work for minimum wage, prison labor still has a clear competitive advantage as state and federal mandated minimum wages for prisoners are small or

¹²¹ Taylor, Jennifer Rae. "Constitutionally Unprotected: Prison Slavery, Felon Disenfranchisement, and the Criminal Exception to Citizenship Rights," *Gonzaga Law Review*, 2010: 385.

¹²² *Ibid.*

non-existent. This disadvantages low income workers who are not incarcerated and who have to make the federally mandated minimum wage; this was the case in a Georgia recycling plant where 50 employees were laid off after their company contracted prison labor.¹²³ 35 of the 50 employees who were laid off had taken their current positions in order to get off of welfare, and many of them promptly had to go back on it after losing their jobs.¹²⁴ The private sector is also acutely aware of the advantages contractors have when they work with prisoners instead of non-incarcerated workers. In one case, Lizer Lawn Care in Wisconsin lost a \$13,000 contract with the state to cut the lawn at the Sheriff's Office.¹²⁵ However, the owner of that company seemed to have some level of understanding for the state's ending of his contract, saying: "Obviously we'd like the work, but I know just like any other business, if there's a chance of saving money, it would be a smart business move."¹²⁶ The common doctrine of free market competition seems to have influenced this business owner's belief, likely because he lost a contract, and not his business to prison labor. However, there is no doubt that for many private and public companies, contracting with prisoners is the cheaper, more logical solution as it saves money and allows for higher profit margins.

Conclusions

These cases taken together, do not necessarily paint a picture of a wide sweeping pandemic of job loss in ways that narratives like offshoring or immigration do. However, the scale of these instances of worker precarity being exacerbated by prison labor is not small. Cases such as 20 up to even 100 workers losing their jobs, especially in areas that are already painted

¹²³ Lafer, Gordon. "Captive Labor: America's Prisoners as Corporate Workforce" *American Prospect*, 1999: 67.

¹²⁴ *Ibid.*

¹²⁵ Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," *Prison Legal News*, 2012.

¹²⁶ *Ibid.*

as economically struggling, simply do not get the news coverage that massive relocations of huge industrial facilities overseas do. Consequently, this may be painted as a seemingly non-issue, an effect that is potentially no different than other shocks to the free market such as baby boomers retiring as one author posits.¹²⁷ However, there are real tangible effects, and prison labor has grown substantially, even in the times since these case studies occurred.¹²⁸ These effects may not seem substantial in the aggregate, but in terms of increased profits from private prisons, and numbers of low wage employees who have lost their jobs, they are. These effects need to be studied in the aggregate, and eventually at a nation-wide level, but for now these case studies demonstrate well the mechanisms by which prison labor has contributed to precarity.

Analysis: How Did We Get Here?

From case study analysis, it is clear that companies with the means are likely to use prison labor in order to cut costs, production time, and to compete more effectively. However, in many cases this decision to capitalize on prison labor is as a response to economic pressures. This pressure comes from an ever changing economic landscape with revenue losses and market volatility becoming ever more common. Simultaneously, incarceration rates continue to increase (albeit at a slower pace than in the 1980s and 90s) maintaining a large, captive, labor pool.¹²⁹ In a world of prevalent offshoring and public pressure to keep jobs domestic and repatriate labor, prison labor is an opportunity for companies to politically and economically benefit.¹³⁰ However,

¹²⁷ Derrick, Frederick et. al. "Prison Labor Effects on the Unskilled Labor Market", *American Economist*, 2004: 79.

¹²⁸ Aman, Alfred & Greenhouse, Carol. "Prison Privatization and Inmate labor in the Global Economy: Reframing the Debate over Private Prisons", Maurer School of Law: Indiana University, 2015.

¹²⁹ Selman, Donna & Leighton, Paul. *Punishment For Sale* 2010: 56.

¹³⁰ Goodridge, Julie et. al. "Prison Labor in the United States: An Investor Perspective," *Northstar Asset Management*, 2018: 13.

this repatriation does not follow common narratives of giving Americans “back their jobs” and rather further entrenches the cyclical poverty many low wage non incarcerated workers face.

Understanding How Private Prison Labor Promotes Itself Politically

In order to prescribe policy solutions to private prisons encroachment on the labor market, it is important to understand the ways in which private prison labor and the prison industrial complex as a whole has propagated itself over time. Politically, private prison labor has been able to bolster itself through the same mechanisms that bolster other means of government corruption: lobbying, large scale campaign contributions, revolving doors, purchased policy drafting, and a general lack of public awareness. In terms of lobbying, there is substantial evidence that corporations spend millions of dollars in order to lobby the government to advance policies and actions that decrease barriers to prison labor. The GEO Group and CoreCivic, two large private prison corporations, spent over five million dollars in 2016 alone lobbying the federal government.¹³¹ While these corporations say that they will not lobby for any laws or policies that would affect individuals and the conditions of their incarceration, they do lobby for longer sentences and increased government funding.¹³² Campaign contributions also play a big role, with one study identifying 3,100 corporations with private prison labor interests or connections donating over \$175 million in state and federal elections in 2016.¹³³ It is also important to note that the officials themselves receiving these campaign contributions may themselves be former corrections officials or have business experience in private prison corporations. There have been several instances of top corrections officials leaving their jobs at

¹³¹ Arabella Advisors. “Understanding and Confronting the Prison-Industrial Complex: An Overview for Philanthropists,” 2018: 12-13.

¹³² Ibid.

¹³³ Ibid.

GEO Group and then going to be in decision making positions at prisons or government administration positions pertaining to prison labor.¹³⁴

However, one of the most insidious instances of political mechanisms being used to advance private prison labor instances is that of policy foundations being paid by private prison corporations to draft policies that are beneficial to the industry. One example is the policy group the American Legislative Exchange Council (ALEC), which had investment connections to the Corrections Corporation of America and the American Bail Coalition when it drafted and lobbied for policy increasing sentencing severity and duration in dozens of states in the 1990s.¹³⁵ Collectively, these political mechanisms make it possible for private prison corporations to create widespread policy changes that benefit their companies and bottom lines. Individuals, especially those affected by the wage precarity these corporations, may be causing through their use of prison labor (as well as prisoners themselves) do not have the “political muscle” necessary in order to sway policy in a direction which may benefit them.¹³⁶ Public opinion is also not on their side in order to help bolster their political fight, as there is a general shroud of secrecy over the use of prison labor. Supply chains, degree of use, and which politicians support and are financially backed by prison labor are all remarkably difficult to ascertain.¹³⁷ This contributes to a lack of understanding of the problem, as well as a lack of any political will to stop the prevalence of private prison labor. This lack of public outrage prohibits any sort of collectivized national or international response to the issue as a whole.

¹³⁴ Ibid.

¹³⁵ Goodridge, Julie et. al. “Prison Labor in the United States: An Investor Perspective,” Northstar Asset Management, 2018: 16.

¹³⁶ Arabella Advisors. “Understanding and Confronting the Prison-Industrial Complex: An Overview for Philanthropists,” 2018: 17.

¹³⁷ Ibid.

Public Outrage, Ignorance, and Paths Forward

However, this lack of political power is not to say that there is no hope surrounding this issue. Many studies have shown that there is substantial concern over prison labor and incarceration in America in general across “all political parties, regions, age, gender, and racial/ethnic groups,” making it one of few instances where nearly everyone can agree on a political issue.¹³⁸ Research also shows that some individuals are concerned over connections they see between mass incarceration being used to fuel labor for private companies and forced labor in other countries as well as America’s own history with slave labor.¹³⁹ However, this particular concern is not more widespread due to the lack of awareness or day to day visibility of private prison labor. Supply chains are often obscured, consumers do not directly interact or know they are directly interacting with prisoners, and there are no laws requiring products produced by prisoners to be labeled as such. Many scholars also argue that there is a sort of reluctance to look critically at our society in many ways, but notably in the area of prison labor. Angela Davis writes: “there is reluctance to face the realities hidden within them, a fear of thinking about what happens inside them. Thus, the prison is present in our lives and, at the same time, it is absent from our lives.”¹⁴⁰

The prison is a taboo, and yet, especially with the growth of prison labor, is an institution that is present in some capacity in everyone’s lives. However, when prison labor is brought to the surface and to the public’s attention, there is generally outrage that is difficult for some companies to shake. This can be seen in the fact that Victoria’s Secret is still associated with prison labor from utilizing women’s prisons to sew undergarments in the 1990s, or in the case of

¹³⁸ Goodridge, Julie et. al. “Prison Labor in the United States: An Investor Perspective,” Northstar Asset Management, 2018: 9-11.

¹³⁹ Ibid.

¹⁴⁰ Davis, Angela. *Are Prisons Obsolete?* New York: Seven Stories Press, 2003: 15.

Whole Foods using prison farms for produce which caused outrage in 2015.¹⁴¹ These factors are all important as they create potentials for future interventions or actions that may have public and individual backing. To individual's core sense of fairness, concern for human rights, and businesses' understanding of public perception and potential decreased profitability, there are clear reasons to publicly speak out against prison labor. However, if actions are not taken to bring this problem out of obscurity, there may be little that can be done to stop public indifference and ignorance.

Potential Solutions

There are many potential solutions to the negative effects of private prison labor which can be taken by the private sector itself. The most obvious solution on the part of the consumer or individual company, is simply to stop purchasing and supporting organizations that profit from prison labor that has been shown to have negative human rights or non-incarcerated labor precarity consequences. Boycotts, divestment, and supply chain interference can all be useful tools in forcing corporations to stop their utilization of private prison labor. They are also among the only tools that are sometimes viable for individuals without substantial power or financial influence to utilize. However, supply chains are not always as cut an dry as they are in cases of direct contracting, as was true in the cases of Tennier and Talon Industries. Supply chains are often obscured, with companies themselves not always knowing that inputs were produced by prisoners. Goodridge provides a good example of how this could realistically manifest, outlining how potatoes that were once harvested by prisoners could be sent to a manufacturer that makes

¹⁴¹ Goodridge, Julie et. al. "Prison Labor in the United States: An Investor Perspective," Northstar Asset Management, 2018: 9.

potato starch from them which then is sold to a distributor and put into a final item as an ingredient that is sold in stores by a final company.¹⁴²

This is not an excuse for the lack of understanding of where inputs are sourced from, as it is the responsibility of companies to do their due diligence. However, companies with values that espouse equality and opportunity may unknowingly find themselves contributing to a system that hurts economically disadvantaged individuals and promoted increased incarceration and recidivism rates.¹⁴³ These multiple levels of distance away from the original act of labor itself are not uncommon in today's world, with cases of forced and slave labor abroad often manifesting in similar ways (think Nike and Apple labor scandals). However, there is an argument to be made that such labor practices should be substantially less opaque, allowing for consumers and businesses alike to have better understandings of where their products and inputs come from in order to more adequately inform their choices.

Policy Recommendations

Given all of these considerations there are some clear policy routes that could be pursued in order to make inroads towards less corrupt and harmful private prison labor practices. For one, state level databases (mirroring existing federal databases) could be mandated, forcing state level prison operations to disclose which companies are utilizing prisoner's labor, thereby illuminating supply chains for consumers. A similar step could be taken on the part of corporations views of their own supply chains, with potential laws outlining disclosure requirements for producers of inputs likely having a similar effect on making the supply chain less opaque. Oversight is also strongly needed in both federal and state level private prisons alike. This is a key area where the

¹⁴² Goodridge, Julie et. al. "Prison Labor in the United States: An Investor Perspective," Northstar Asset Management, 2018: 8.

¹⁴³ Arabella Advisors. "Understanding and Confronting the Prison-Industrial Complex: An Overview for Philanthropists," 2018: 17.

United States is in violation of international law, and by implementing higher standards of oversight, the human rights violations and severe undercutting of markets could be curtailed. On that note, a comprehensive policy delineating inmate minimum wages in state level institutions could be monumental in reducing the wage precarity and forced labor impacts of private prison labor. In a system where inmates make wages that are non-existent or insignificant, there would not be nearly as many opportunities to exploit prisoner's labor and undercut private markets. Furthermore, campaign finance reforms, as well as regulations on lobbying could have an impact on how powerful companies are able to consolidate power and influence in the prisons they operate. As one final policy recommendation, the public and the International Labor Organization itself could place increased pressure on the United States to not only follow and abide by, but to ratify Convention 29 on forced labor. The United States has refused to do so, and there have not been substantial pressures from the public or international community to make this change happen. Larger than but also intrinsic to any policy recommendation's impact is public support and political and economic pressure placed on politicians and corporations.

Exploratory Conclusions

The largest barrier, and one of the reasons for the existence of this thesis, however, is the utter lack of publicly available data or research that has been done on private prison labor and its impacts. There are potentially thousands of corporations within the United States that directly benefit from the prison industrial complex as a whole and more specifically prison labor. What is not known is who these companies are, to what extent prison labor benefits them, how many jobs are lost to prison labor in the aggregate, prison labor's effects on offshoring and repatriating labor, and dozens more questions. Even finding what reliable data on what wages are for prisoners in private institutions is nearly impossible today. Substantial future research is

necessary in order to establish the degree and scope of the problems private prison labor may cause, not only in terms of labor precarity, but human rights, psychological impact on prisoners, environmental degradation, effects on recidivism rates, and many, many other areas of potential impact. In order to adequately form any effective policy response, there must be some degree of effort made in producing future aggregate studies on the impacts that prison labor has on the United States political and economic realities as a whole. Absent that, smaller questions, such as the extent to which labor precarity is caused by private prison labor, will likely never be answered fully. This paper successfully offers a baseline evaluation of private prison labor's effects on wage precarity, finding that to a measurable extent private prison labor contributes to wage precarity. With future substantial research, changes to this reality through both public and political pressures may eventually prove successful.

Bibliography

Alexander, Michelle. *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*.

New York : [Jackson, Tenn.] :New Press ; Distributed by Perseus Distribution, 2010.

Aman, Alfred & Greenhouse, Carol. "Prison Privatization and Inmate labor in the Global

Economy: Reframing the Debate over Private Prisons", Maurer School of Law: Indiana University, 2015.

Arabella Advisors. "Understanding and Confronting the Prison-Industrial Complex: An Overview for Philanthropists," 2018.

Camp, Scott & Gaes, Gerald. "Growth and Quality of U.S Private Prisons: Evidence from a

National Survey", Federal Bureau of Prisons Office of Research and Evaluation, 2001.

Cox, Charles & Meiners, Roger. "Private Employment of Prison Labor", *Journal of Private Enterprise*, 2001.

Davis, Angela. *Are Prisons Obsolete?* New York: Seven Stories Press, 2003.

Davis, Angela. "Ferguson Reminds Us of the Importance of a Global Context," Interviewed by Frank Barat, Brussels, Belgium, September 2014.

Derrick, Frederick et. al. "Prison Labor Effects on the Unskilled Labor Market", *American Economist*, 2004.

Dolovich, Sharon. "State Punishment and Private Prisons", *Duke Law Journal*, 2005.

Goodridge, Julie et. al. "Prison Labor in the United States: An Investor Perspective," *Northstar Asset Management*, 2018.

International Labour Organization. "ILO Forced Labour Convention Number 29", 1930.

Kang, Susan. "Forcing Prison Labor: International Labor Standards, Human Rights and the

Privatization of Prison Labor in the Contemporary United States", *John Jay College of*

- Criminal Justice, New Political Science, 2009.
- Kasmir, Sharryn. "Precarity", Cambridge Encyclopedia of Anthropology, 2019.
- Lafer, Gordon. "Captive Labor: America's Prisoners as Corporate Workforce" American Prospect, 1999.
- Milman-Sivan, Faina. "Prisoners For Hire Towards a Normative Justification of the ILO's Prohibition of Private Forced Prisoner Labor", University of Haifa, Fordham International Law Journal, 2013: 1619-1681.
- Moody, Kim. "The State of American Labor." Jacobin. 2016.
- Nilsson, Linus. "Abandon All Labour Rights, Ye Who Enter Here: The Labour Rights of Prisoners", Lund University, 2017.
- Nossal, Kim & Wood, Phillip. "The Raggedness of Prison Privatization: Australia, Britain, Canada, New Zealand and the United States Compared," Queen's University, 2004.
- Prison Policy Initiative. "State and Federal Prison Wage Policies and Sourcing Information," Prison Policy Initiative, 2017.
- Quigley, William. "Prison Work, Wages, and Catholic Social Thought: Justin Demands Decent Work for Decent Wages, Even for Prisoners", Santa Clara Law Review. 2004.
- Reutter, David. "Prison Slave Labor Replaces Freeworld Workers in Down Economy," Prison Legal News, 2012.
- Schwartzapfel, Beth. "Your Valentine, Made in Prison," The Nation, 2009.
- Selman, Donna & Leighton, Paul. Punishment For Sale 2010.
- Swepston, Lee. "Prison Labour and International Human Rights." 2001.
- The Court of Appeals of Washington, Division One. "Talon Industries Incorporated v. The Washington State Department of Corrections," Casemine, 2008.

Taylor, Jennifer Rae. "Constitutionally Unprotected: Prison Slavery, Felon Disenfranchisement, and the Criminal Exception to Citizenship Rights," *Gonzaga Law Review*, 2010.

UNICOR. "Federal Prison Industries, Inc. 2017 Annual Report," Federal Prison Industries, Inc, 2017.

United States Government Accountability Office. "Decision in the Matter of Tennier Industries," File B-403946.2, Washington DC, 2012.

Young, Cynthia. "Punishing Labor: Why Labor Should Oppose the Prison Industrial Complex", *New Labor Forum*, 2000.