

Prison labour – justified punishment, rehabilitation opportunity, or disciplined workforce for private industry?

The Worker Rights Consortium, a US-based organisation which monitors labour conditions in factories supplying branded apparel to universities and colleges, and of which the University of Edinburgh is a member, has recently announced some changes in its policy template. One of the changes proposes banning all forms of prison labour in supply chains, rather than just 'forced' prison labour as in the original policy. In addition, those of us representing the University of Edinburgh at attended this year's Environmental Association for Universities and Colleges conference encountered a lighting supplier which uses prison labour. It has become apparent that prison labour, and in particular the use of prisoners to manufacture goods for external markets, is a topic worthy of research and analysis. This paper aims to initiate investigation and reflection by colleagues and students, in order to open up the debate on what standpoint a university such as Edinburgh, with a strong focus on fairness in trade, should take.

Why should prisoners work and who benefits?

There are three key, and often concurrent, motives behind prison labour: punishment, rehabilitation, and the potential to save or make money. Britain began passing sentences of hard labour as punishment in the 1840s, when colonies would no longer accept convicts (Vagg and Smarrt 1999). Forms of work prescribed typically served no useful purpose. In eighteenth century France, punishment shifted from public torture to prison regimes which included work on chain gangs (Foucault 1977). Yet during the industrial revolution, economic motives changed the face of prison labour: from futile work as pure punishment, to 'useful industrial labour' (Britain's 1898 Prison Act, cited by Vagg and Smarrt 1999). As well as a shift to prisoners performing cost-saving work (for example laundry, tailoring, farms or in prison kitchens) or profit-making work (typically manufacturing for prison-owned industries), there was a significant rise in the numbers of prisoners in Western Europe and the US working. It is widely argued that these changes are directly linked to new industries' needs for obedient, disciplined workers for low-grade jobs (Foucault 1977; van Zyl Smit and Dünkel 1999; LeBaron 2012). There are even assertions that increasing numbers of poor people were criminalised, such as unlicensed beggars, in order to be able to train them in the discipline of industrial labour (LeBaron 2012).

While most manufacturing work was carried out for prison-owned industries, some US prisoners were contracted out to private firms. In addition to being able to recruit trained and disciplined ex-prisoners for low-paid factory work, companies were now also able to exploit human capital within prisons. These firms were able to pay low wages, and save money due to buildings, storage, and labour supervision costs being covered by the state (LeBaron 2012). High levels of discipline in prison environments could also mean higher productivity levels (LeBaron 2012). Although private use of prison labour lessened during the early twentieth century, in recent decades a significant increase in prisoners working for private firms has occurred globally (Henriksson and Kretch 1999; LeBaron 2012; Burnett and Chebe 2010). There is a lack of transparency regarding the extent to which such arrangements are contributing to prison costs and saving public money (Allison 2009). The concern is that with private companies saving money due to reduced costs, they are effectively being

Liz Cooper
May 2013

subsidised by tax payers, who cover the expense of prisoner upkeep. There has also been a rise in privately-run prisons in the UK since the 1990s, which are often offering prison labour to private firms, with little transparency about who benefits (Vagg and Smarrt 1999; Burnett and Chebe 2010; LeBaron 2012).

Some argue that this recent surge in private use of prison labour has been used to drive down wages and conditions of free workers. LeBaron (2012) describes a number of cases where manufacturing jobs in the US have been shifted to prisons – for general cost saving reasons, and also at times of strikes by free workers, to avoid having to listen to organised labour requests. However, many firms will not wish to capitalise on prison labour, either for moral or risk management reasons, or because prison labour could turn out to be less efficient due to a lack of motivation or time spent handling security issues.

Evidently there are potential economic benefits for prisons and for private industry to making prisoners work. Yet in recent decades, many governments have promoted prison labour for its rehabilitation potential - both in terms of decreasing rates of reoffending, and preparing prisoners for lives as financially-independent workers on release. The UK's 1960 Advisory Council on the Employment of Prisoners advocates vocational training and work experience (although also maintains that the 'best possible economic use should be made of prison labour') (Vagg and Smarrt 1999). A 2010 Green Paper on the punishment and rehabilitation of UK offenders called for 'hard work and industry, instead of enforced idleness' (Fletcher 2011). There are indeed examples of inspiring work and training opportunities being offered, such as via a graphic design social enterprise at HMP Coldingley, the UK's first industrial prison opened in 1969 (Fletcher 2011). However, there is widespread criticism that work opportunities involve repetitive, manufacturing tasks which do not reflect opportunities available in today's labour market (Kang 2009; Allison 2009). There is also the hurdle for ex-prisoners of not being able to find work because of their criminal record (Fletcher 2011; LeBaron 2012).

Can prison labour comply with ideas of fair trade?

Concepts of fair trade typically call for reasonable compensation for work carried out, decent working conditions, the right to freedom of association, and the provision of training opportunities. The question of what sort of compensation should be given to working prisoners is complex. Many would argue that prisoners should work without any monetary compensation, both as punishment, and in return for the food, accommodation, and other free services they receive. In reality, the majority of working prisoners around the world do receive some form of compensation, although wages are typically very low (Henriksson and Kretch 1999). In the UK, as well as being paid a small salary, work is linked to privileges, such as phone cards and TV. Under the England and Wales Incentives and Earned Privileges Scheme (IEP), there are three levels of incentives, with prisoners able to move up to the highest level based on good behaviour. Prisoners on higher levels are the only ones able to apply for more lucrative prison jobs (BBC 2013).

Very low wages paid to prisoners have attracted widespread criticism, and calls for payment of the national minimum wage. However, it would not seem fair to provide prisoners with minimum wage jobs, without taking into account the free board and lodgings they receive. In a number of countries,

Liz Cooper
May 2013

there has been a move towards paying enhanced wages or market rate salaries, with proportions being deducted for bed and board, and for victim compensation (Vagg and Smarrt 1999; Henriksson and Kretch 1999). Under the US Prison Industry Enhancement Certification Program (PIECP), where prisoners are working for private firms, this means prisoners end up with twenty per cent of the original salary for themselves (Kang 2009). However, questions are raised about whether prisoners should have the right to such paid jobs, when many free people struggle to find work. In addition, this may not make sense if work is carried out for prisons or prison-owned industries, as it would be inefficient to transfer wages from the state to prisoners and then back to the state.

In terms of working conditions, prisoners must comply with whatever rules, procedures and benefits are on offer. They are typically unable to join unions, go on (meaningful) strikes, or make complaints about conditions (Burnett and Chebe 2010). Trade unions avoid supporting better working conditions in prisons, as they are wary of losing member support, and tend to consider prison labour as a threat to outside job security, wages and conditions (de Jonge 1999; Kang 2009). Those in private prisons are often worse off, for example in the US, PIECP provisions and the Fair Labor Standards Act do not apply to private prisons (Kang 2009). The US has become increasingly cautious about working conditions in prisons in developing countries, condemning and monitoring Chinese prison labour, and attempting to ban imports of goods made in Chinese prisons (Kang 2009). However, the US knowingly exports products made in its own prisons (Kang 2009). There is perhaps an assumption that human rights are less likely to be upheld in China, and that prison labour in the West will be better regulated.

As for training opportunities, as discussed above, there are some examples of appropriate skills training being offered to prisoners, but also a considerable amount of criticism of the lack of training relevant to contemporary work opportunities.

It can perhaps be assumed that in a fair trade paradigm, workers must be free to choose whether to work or not. While paid work is typically presented as an opportunity for prisoners, there appears to be a lack of clarity regarding whether work is voluntary or obligatory. Prisoners are often compelled to comply with work schemes. Indeed, in the UK, under the 1952 Prison Act, which allowed ministers to make rules without parliamentary approval, it is an offence to refuse to work, or to not work hard enough. Punishment can include extra days' imprisonment (Allison 2009). In the US, work is compulsory, when made available (although there are currently far fewer jobs than prisoners). The state of Oregon made 40-hour working weeks obligatory for prisoners under the Inmate Work Act of 1994, in order to subsidise public costs (Kang 2009). In Southern US states such as Arizona, harsh labour on chain gangs was reintroduced in the 1990s – referred to officially as 'restricted labour gangs' (Henriksson and Kretch 1999). ILO conventions on forced labour do exempt prison labour, but not if the labour benefits private companies or occurs within privately run prisons (Kang 2009). The US is, therefore, violating these conventions (Kang 2009), meaning in many cases prison labour could be classed as forced labour.

Questions raised

Whether prisoners should be obliged to work towards the upkeep of their prison is not the focus here. In terms of making decisions about procurement and policy in a university context, we are

Liz Cooper
May 2013

interested in the ethics of using prison labour to manufacture for external markets. While a couple of days of desk-based research can barely touch the surface of the complexities of prison labour around the world (and indeed the focus here has been limited to the democratic West), some interesting questions have been raised:

- Should private firms be able to capitalise on cheap, disciplined prison labour?
- To what extent do prisons save (public) money by contracting out prisoner labour to private firms?
- Is use of prison labour by social enterprises or charities more justifiable?
- What effects does private firms' use of prison labour have on external job markets?
- Should prisoners have the right to paid jobs when unemployment rates are high?
- When is prison labour forced, and when is it voluntary?
- What labour rights should prison workers have? (in both public and privately-run prisons)
- What kind of work can be classed as useful training and experience in today's labour markets?
- Should prisoners be paid national minimum wage (with deductions for board and lodgings etc.)?
- How can we know when prison labour is used in supply chains?

Overall the picture is so varied and complex, that it may be dangerous to not be seen to be actively excluding prison labour from our supply chains – both in terms of doing the right thing, and reputation management. Yet this could be very difficult to guarantee in practice, as global supply networks can be complex and opaque.

References

Allison, E., 2009. *A fair day's prison work?* [Online]. The Guardian. Available from: <http://www.guardian.co.uk/society/joepublic/2009/sep/09/prison-work-exploitation> [Accessed 4th May 2013].

BBC, 2013. *Prisoners 'must work harder' for privileges* [Online]. Available from: <http://www.bbc.co.uk/news/uk-22341867> [Accessed 4th May 2013].

Burnett, J & Chebe, F., 2010, Captive labour: asylum seekers, migrants and employment in UK immigration removal centres. *Race & Class*, 51(4), pp. 95-103.

Fletcher, D 2011. The Development of Working Prisons: Transforming Inmates from the Lumpenproletariat to the Contingent Workforce?. *British Journal Of Community Justice*, 9(1/2), pp. 111-124.

Henriksson, H. & Krech, R., 1999. International Perspectives, in: Van Zyl Smit, D., & Dünkel, F., 1999. *Prison Labour: Salvation Or Slavery?: International Perspectives*. Ashgate.

Liz Cooper
May 2013

De Jonge, G., 1999. Still 'Slaves of the State': Prison Labour and International Law, in: Van Zyl Smit, D., & Dünkel, F., 1999. *Prison Labour: Salvation Or Slavery?: International Perspectives*. Ashgate.

Kang, S 2009. Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States. *New Political Science*, 31(2), pp. 137-161.

LeBaron, G., 2012. Rethinking Prison Labor: Social Discipline and the State in Historical Perspective. *Working USA*, 15, pp. 327–351.

Vagg, J. & Smarrt, U., 1999. England and Wales, in: Van Zyl Smit, D., & Dünkel, F., 1999. *Prison Labour: Salvation Or Slavery?: International Perspectives*. Ashgate.

Van Zyl Smit, D., & Dünkel, F., 1999. *Prison Labour: Salvation Or Slavery?: International Perspectives*. Ashgate.