

## Slaves of the State *Paul Wright*

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Many people have the mistaken impression that slavery was outlawed or abolished in the United States after the civil war by the passage of the 13th amendment. Unfortunately, that was not the case. The 13th amendment reads: "Neither slavery nor involuntary servitude, *except as punishment for crimes whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction." The effect of the 13th amendment was not to abolish slavery but to limit it to those who had been convicted of a crime.

The reality was made apparent in the aftermath of the civil war when large numbers of newly freed black slaves found themselves "duly convicted" of crimes and in state prisons where, once again, they laboured without pay. Until the last 20 years it was common practice for state prisons to "rent" prison labor out to private contractors in a modern form of chattel slavery. This situation led the Virginia Supreme Court to remark in an 1871 case, *Ruffin v. Commonwealth*, that prisoners were "slaves of the state". All that has changed since then is that the state is less honest about its slave holding practices.

Until the 1930's most state and federal prisons were largely self sufficient, producing most of the goods and food they consumed and even produced for sale a surplus of food and some industrial products. In many states prisoners even served as armed guards (until the mid-1970s the state of Arkansas held some 3000 prisoners with only 27 civilian employees) and many other functions which required minimal investment by the state. Prison self sufficiency and excess production for profit largely ended during the mid-1930's when the US was in the midst of the depression and both unions and manufacturers complained about competing against prison made products on the open market. In most manufactured products the labor cost is the most expensive component. Cut the labor cost and the resulting profit margin increases. With a prison labor force working at no cost the state and federal prisons could easily compete against any private manufacturer and workers. One of the laws passed was the Ashhurst-Summers Act which prohibited the transport in interstate commerce of prison made goods unless the prisoners were paid at least minimum wage.

Prison labor did not start to become a major issue again until the 1980's. Until then most prison produced goods were either for use within the prison system or sale to other state agencies, license plates being the most famous example. This began to change when the US's massive prison building and incarceration binge began to gather steam. In a 1986 study designed to reduce the cost to the government of its prison policies, former Supreme Court Justice Warren Burger issued the call for transforming prisons into "factories with fences". In essence, prisons should once again become self sustaining even profit producing entities requiring minimal financial input from the state. The "factories with fences" proponents seek to turn the clock back to the time when prisoners were merely slaves of the state.

While some think that slavery, i.e. unpaid, forced labor, offers enormous profit potential for the slave owner, there are historical reasons slavery is no longer the dominant mode of economic production. First, the slave owner has a capital investment in his slave, regardless of whether the slave is working or producing profit he must be fed and housed in minimal conditions, to ensure the slave's value as a labor producer remains. With the rise of industrial capitalism in the 18th and 19th century capitalists discovered that capitalism has its boom and bust cycles characterized by over-production. Thus idle slaves would become a drain on the owner's finance because they would still require feeding and housing, regardless of whether they were working. However if the slave was "free" he could be employed at low wages and then laid off when not producing profit for the employer. The wage slave was free to starve, free to be homeless, etc. with no consequences for the owner.

Another reason slavery was inefficient compared to wage slavery was that the slaves would occasionally revolt destroying the means of production and killing the slave owner. More common and less dramatic were the acts of sabotage and destruction that made machinery with its attendant capital investment, impractical for use by slaves. So by the middle of the 19th century wage slaves employing machines could outproduce, at greater profit for the factory owner, chattel slaves using less easily damaged more primitive machinery.

The problem slave owners of old faced was what to do with non-producing slaves. Today's slave owners (i.e. the state), face the opposite problem of having idle slaves who must be fed, clothed and housed whether or not they produce anything of value. The current thinking argues that any potential profit produced by prison slaves is better than none.

Some of the proponents of prison slavery try to disguise it as a "rehabilitation" or "vocational" program designed to give prisoners job skills or a trade which can be used upon their release. This is not the case. First, almost without exception, the jobs available in prison industries are labor intensive, menial low skill jobs which tend to be performed by exploited workers in three places: third world dictatorships, by illegal immigrants in the US, or by prisoners. Clothes and textile manufacturing is the biggest and most obvious example of this. Second, because the jobs don't exist in the first place, the job skills acquired are hardly useful. Does anyone expect a released prisoner to go to Guatemala or El Salvador to get a job sewing clothes for the US market at a dollar a day? Third, if its rehabilitational then why not pay the prisoner at least minimum wage for his/her work? Fourth, it ignores the reality that the US has at least 8 or 9 million unemployed workers at any given time, many of them highly skilled, who cannot find jobs that pay a meaningful wage to support themselves. So called "job retraining" programs are a failure because all the training in the world won't create jobs with decent wages. In pursuit of higher profits (i.e. lower salaries) US and multinational corporations have transferred virtually all labor intensive production jobs to Third World countries. If prisoners are going to be exploited as slave labor it should be called what it is.

The US has little problem condemning the export of prison made goods from China. What makes this rank hypocrisy is the fact that the same criticisms levelled by the US government against Chinese prison made goods can be levelled at US prison made goods. According to a March 18, 1994, story in the *Seattle Times*, prison made goods from California and Oregon are being exported for retail sales. In a supreme irony, the California DOC is marketing its clothing lines in Asia competing against the sweatshops of Indonesia, Hong Kong, Thailand and of course, the Chinese. The "Prison Blues" brand of clothes, made by prisoners in the Oregon DOC, has a projected sales of over \$1.2 million in export revenues. US State department officials were quoted saying they wished prison made goods were not exported by state DOC's because it is being raised as an issue by other governments, namely the Chinese, which have cited US practices in response to criticisms. For their part the Chinese have announced a ban on the export of prison made goods while the US is stepping up such exports.

The California prisoners making clothes for export are paid between 35 cents and \$1 an hour. The Oregon prisoners are paid between \$6 to \$8 an hour but have to pay back up to 80% of that to cover the cost of their captivity. As they are employed by a DOC owned company this is essentially an accounting exercise where the prisoners' real wages are between \$1.20 to \$1.80 an hour. Still competitive with the wages paid to illegal immigrant sweatshop workers here in the US and wages paid to garment workers in the Far East and Central America.

Fred Nichols, the administrator of Unigroup, the Oregon DOC prison industries was quoted saying: "We want them to work in the same environment as on the outside ..." in terms of hiring interviews and such. Yet obviously this does not include the right to collective bargaining and union representation which are, of course, common to the labor process outside prisons and would teach important rehabilitational values such as collective dispute resolution, and the principle of a fair wage for work.

Companion articles to this one detail conditions in the federal prison system's Unicor Washington state industries. While the particulars may change the trend continues towards increased exploitation of prison slave labor. Some states, especially those in the south such as Texas, Arkansas and Louisiana still have unpaid prisoners laboring in fields supervised by armed guards on horseback, with no pretense of "rehabilitation" or "job training". In those states the labor is mandatory, refusal to work brings harsh punishment and increases prison sentences served.

In 1977 the Supreme Court decided *Jones v. North Carolina Prisoner's Labor Union* which removed the notion that the courts will offer any protection for the idea of prisoner union organizing. In the past, *Prison Legal News* has reported on efforts and court cases to seek a minimum wage for prison laborers. For the most part such efforts through the courts have been unsuccessful with courts bending over backwards to read exemptions (which are not written) into the federal *Fair Labor and Standards Act* (FLSA). Still, the litigation should continue to chip away on that front.

On the political front we must expose prison slavery for what it is and at the same time seek collective bargaining for safe working conditions, fair pay etc. It took workers in this country nearly 160 years to obtain this in 1934 and it has since been whittled away. So it will be neither easy nor quick. The problem that slave owners of old faced is still faced by modern slavers, namely resistance by the slaves. To the extent that private business run slave operations in prisons, there is the massive state subsidy that they receive and for state run enterprises there are the hidden costs. Under guise of "security" go the enormous expenses associated with guards, checkpoints, controls, etc., that are otherwise not present with wage slaves on the outside. The occasional mutiny by irate slaves with concomitant loss of production, capital investment in machinery, etc. is likely to occur and deter private ventures.

In Washington the state offers a lot of incentives for private businesses to employ prison slaves. Class I venture industries pay no rent, electricity, water or similar costs. They are exempt from state and federal workplace safety standards, pay no medical, unemployment or vacation/sick leave to slaves who have no right to collective organizing or bargaining. In a case like this we are seeing welfare capitalism where private business is getting a handout from the state at taxpayer expense. One which, I suspect, will largely swallow the profit paid back to the state under guise of taxes, room and board, etc. by the prisoner. To the extent that prison slaves are forced to pay state and federal taxes there arises the question, linked to the right to vote, of taxation without representation. If forced to pay taxes like any other citizen under guise of rehabilitative or vocational employment, then why not the right to vote given other taxpayers?

Workers on the outside should also be aware of the consequences that prison slave labor has for their jobs. Ironically, as unemployment on the outside increases, crime and the concomitant incarceration rates increase. It may be that before too long people can only find menial labor intensive production jobs in prisons or third world countries where people labor under similar conditions. The factory with fences meets the prison without walls.