


Captive labour and the free market: Prisoners and production in the USA

Genevieve LeBaron

Abstract

This article documents the resurgence of US prison work programmes under neoliberalism, investigating the dynamics through which state and private corporations have erected factories inside public prisons, moving manufacturing jobs behind bars. It contends that the corporate use of inmate labour has not resulted from an autonomous capital's quest for profit, but rather that it is a strategy that has developed through and cannot be abstracted from the US state as it has restructured in order to author processes of globalisation, and as it has adopted the neoliberal domestic policy of mass incarceration.

ne central contradiction of capitalism that has been intensified in the neoliberal era is that the increased mobility and legal and economic freedom of capital generally corresponds to the decreased mobility and constrained economic, political and legal freedom of the labouring class, both inside and outside the workplace. The case of US prison labour makes this contradiction explicit: since the resurgence of US prison work programmes in the 1970s, private and state corporations have set up factories in state-level jails in which inmates—literally, captive workers—toil for as little as 23 cents an hour, with 80 per cent of their wages appropriated for newly imposed ‘room and board’ costs at the prison (National Institute of Justice, 1988). The increased exploitation of prisoners has also constrained the market freedom of low-skilled US workers, who are being laid off as jobs formerly available on the free market are moved behind bars. Inmates in Washington and California prisons, for example, have produced goods for subsidiary companies of Boeing, Victoria’s

Secret, TWA and Starbucks, while those companies' former employees struggle to find work (Wright, 2001; Davis, 2003; US Senate, 2003).

Contrary to the contents of many scholarly accounts of the current conjuncture, prison labour also makes it explicit that the constrained freedom of the labouring class under global capitalism has not exclusively resulted from increased exploitation by capital for the purpose of profit. Rather, states have played an active role in this as they have regulated the mobility of labour so that the movements of labour enhance, rather than endanger, capitalist profit, and as they have restructured in order to author the processes of neoliberal globalisation (Wood, 2003; Panitch & Gindin, 2004). Indicative of this, in the case of prison labour, have been government attempts to market inmate work programmes as a flexible production strategy, with recent advertisements announcing that, 'Virginia's Prisons Are Wide Open to Business', and 'Inmate Labor: The Best Kept Secret in Outsourcing' (Virginia Department of Corrections, 2003).

The neoliberal era has been characterised by the reorganisation of the US state towards capital accumulation; and as resources have been shifted away from social-service-oriented institutions towards the Treasury, which is tasked with managing accumulation, states have increasingly downloaded social costs onto individuals (Panitch & Gindin, 2004). The resurgence of prison work programmes during neoliberalism has thus been one government strategy to cut the cost of incarceration by making prisoners pay for themselves—first, by appropriating their labour power; and then, once the contradiction of competing with private capital becomes clear, by making prisoners' labour power available to capital as well.

Carceral expansion under neoliberalism

The terms and conditions of US public and private firms' use of prison labour to produce commodities has always corresponded to and reflected a balance of class forces between capital and labour, as well as reflecting the priorities of the US state. While prison labour has been used as a state and private-sector cost-cutting strategy since the nineteenth century, the relative power of unions and small businesses between the 1940s and 1970s forced the prison industries into a period of inactivity, since they constituted unfair competition (US Dept. of Justice, 1985: 9). Federal Prison Industries (FPI), publicly traded under the name UNICOR,

emerged again in the late-1970s, however, in the face of declining working-class power.

The success of the post-war boom years in terms of securing accumulation left the USA, by the end of the 1960s, in a position of unprecedented economic and political power (Albo, 2005: 13). As commercial profits began to decline in the 1970s, however—and as the state struggled to balance international interventions with double-digit inflation, a declining dollar and large capital outflows at home—forces emerged to challenge the Keynesian-era trends of inward economic development, expansionary welfare policies and the strengthened bargaining power of unions (Panitch & Gindin, 2005: 59). Policies designed to undermine working-class power and combat inflation, such as the ‘Volcker shock’ of 1979–82, were officially implemented as policies of ‘discipline’ and ‘stability,’ as the state balanced its legitimisation function with attempts to remove barriers to accumulation. This marked the beginning of neoliberalism, which, since the late-1970s, has been characterised by the deepening of markets and competitive pressures.

The emergence of neoliberal policies in the USA has been essentially a political response to the domestic gains that had previously been achieved by subordinate classes, which, from capital’s perspective, became barriers to accumulation. Neoliberalism has involved not only the reversal of those gains, but also the weakening of their institutional foundation as the administrators of the US state have struggled to maintain the conditions in which profitable capital accumulation is possible (McNally, 2002; O’Connor, 2002; Panitch & Gindin, 2005).

In the USA, the deepening and consolidation of neoliberal trends in the 1980s gave rise to a burgeoning surplus population and, as penologists and political scientists have documented, to mass incarceration coupled with coercion as a strategy for dealing with the inevitable fallout from cuts to social programmes, soaring poverty and homelessness (Parenti, 1999: 59; McNally, 2002: 52). As Loïc Wacquant argues,

After forsaking the Fordist-Keynesian social compact in the mid-1970s and the crumbling of the black ghetto as an instrument of caste control, the United States launched into a unique sociohistorical experiment: the incipient replacement of the welfare regulation of poverty and of the urban disorders spawned by mounting insecurity and racial strife by its penal management via the police, courts, and correctional system. (Wacquant, 2002: 22)

The law-and-order crusade was carried out through the coupling of legitimating policies with policies and practices of outright coercion. These included:

the creation of a public frenzy about drugs; social cleansing policies to get the poor off the streets in order to gentrify chunks of inner cities; a crackdown on immigrants and refugees, particularly on the Mexican border; and a racist law-and-order regime in the inner cities designed to intimidate those sections of the population who, with virtually nothing to lose, might be the most likely to rebel. (McNally, 2002: 52)

Such attempts to manage the social consequences of neoliberal policies and, specifically, to manage people who might pose a challenge to the state's legitimation, have achieved the world's highest incarceration rate for the USA, with one in every thirty-two adults and one black man in every nine currently behind bars (Davis, 2003). Prison expansion since the 1980s has occurred in two dimensions: first, there has been a *vertical expansion* due to carceral hyperinflation: the inmate population was quadrupled in twenty-five years, and the US rate of imprisonment is six to twelve times that of other advanced societies, even as crime remained stagnant and then declined during the 1980s. Second, there has been *horizontal expansion* via enlarged probation, restructured parole and the growth of electronic and genetic databases, allowing for increased surveillance at a distance (Wacquant, 2002: 24).

While prison expansion in the 1980s was in many ways necessitated by the state's legitimation crisis resulting from the social costs of neoliberal restructuring, it was an enormously expensive strategy, and by 1990, carceral costs consumed between 10 and 15 per cent of public budgets (Wacquant, 2002: 22). Thus, in the face of declining working-class power, the prison industries were reinvigorated as a state attempt to recover the associated costs of incarceration. Carceral and carceral industry expansion, however, was also exacerbated and enabled by the deepening and consolidation of more general neoliberal trends, which have unfolded through the convergence and contradiction of local, federal and international strategies of accumulation, legitimisation and coercion. Five tendencies were especially important.

First, the internationalisation of capital and the restructuring of the domestic labour market catalysed carceral expansion. Under neoliberalism, state policies have coupled with the internationalisation of capital to reduce the power of labour so that workers, especially female workers and workers of colour, have been forced

to accept precarious, informal and seasonal and part-time work (McNally, 2002: 96–147). As capital has internationalised, providing leverage for employers relative to the immobility of labour, increased competition resulting from trade liberalisation has compelled employers to drive down labour costs (Albo, 2005: 14). As capital was reallocated in the US economy during the 1970s and 1980s, existing firms restructured internally, outsourced processes to cheaper and more specialised suppliers, relocated to the increasingly urban southern states, and merged with other firms.

Driven by the forces of competition and crisis, firms employed cost-cutting strategies, central to which was the relocation of production into lower-wage zones. While these sites were often located offshore, some firms were able to stay in the USA by moving production into state prisons—a strategy that peaked during the 1990s in the face of surging competitive sector imports. When examined in this continuum of the cost-cutting strategies attempted by businesses in the face of an over-accumulation crisis, the use of inmate labour by private firms under neoliberalism was not anomalous, but simply one extreme in a range of outsourcing tactics.

Second, prison industries emerged as municipal strategies of accumulation and legitimation. As municipal governments managed the tensions that resulted from the internationalisation of capital, the revival of prison industry emerged as a strategy to boost competitive sector firms by subsidising their production. The competitive sector, characterised by low productivity, small-scale production, local or regional markets and relatively low wages, faced severe challenges in a climate of globalising capital. Reflecting the state's need to play a role in managing those contradictions, twenty-one states had passed statutes specifically authorising significant private-sector involvement in prison-based businesses by 1983 (Parenti, 1999: 53). The 1979 Prison Industry Enhancement Act lifted federal restrictions concerning 'joint-venture' programmes between private firms and prison industries, and the Percy Amendment of the same year legalised the sale of inmate-produced goods produced within a municipality on that municipality's public market (Parenti, 1999: 232–238).

While this strategy evolved, in the 1990s, into an attempt to raise monopoly-sector efficiency, during the 1970s and 1980s it was primarily limited to the municipal-level subsidising of small businesses whose production was limited within their borders (National Institute of Justice, 1986). As competitive-sector firms struggled in the face of increasing competition and monopoly, municipalities saw the prison industries as an opportunity to 'even the playing field' by offering similarly low labour costs, tax

incentives and flexibility to those that firms would find overseas (O'Connor, 2002: 13).

Competitive-sector industries produce for markets that are seasonal, subject to sudden changes in fashion or style or otherwise irregular, and so there is little opportunity or incentive to stabilise employment. Their operations must be able to set up and shut down without high losses from excess physical capacity or high capital investments per worker, and prison industries have proved capable of accommodating these requirements. Indicative of this are the conclusions reached by a National Institute of Justice report on 'Private sector involvement in prison-based businesses', which expounds the benefits of prison industries to competitive-sector firms with 'special labor needs':

Some general benefits can accrue to virtually any company that agrees to employ prisoners. The principle economic benefit is free use of space and utilities. Some personnel cost savings can be realized by employing prison labor, primarily because prisoners are not compensated for their work, and employer-paid health insurance coverage is not required. *There are also, however, some specific benefits that can help companies with special labor needs.* Prison labor is attractive to the employer with seasonal labor needs, who can fine-tune labor costs much more precisely, and with much less risk of losing workers, with a prison labor force than with non-prisoner workers ... Companies with shift demands that are difficult to fill consistently (e.g. weekend or night work) may be able to substitute prison labor for those periods when labor is most difficult to obtain. Companies with short-term product manufacturing cycles followed by long idle periods for workers may find a prison labor force an attractive alternative to mass hirings followed by mass layoffs. (National Institute of Justice, 1986: 4. my emphasis)

The coupling of competitive industries with municipal prisons explains why private-sector involvement during that time primarily took the form of contracts in which private enterprises contracted with a municipality's Department of Corrections (DOC) for inmate labour. The firm supplied raw materials and equipment while the DOC furnished space and supervision, making prison warehouses, like offshore sweatshops, an integral component of 'vertical disintegration'—the break-up of production processes previously performed within the same firm and within a single complex (Moody, 1997: 93).

Just as labour groups and monopoly-sector firms resisted this strategy prior to the Great Depression until its eventual disintegration in the 1940s, its revival during neoliberalism has been similarly protested at the municipal level.

A third accumulation strategy that enabled prison-industry expansion during the late-1970s and 1980s was the municipal-level construction of new prisons necessitated by rising carceral rates, by means of appropriated inmate labour (Funke et al., 1989).

As private firms carried out a series of labour-saving shutdowns and a major shift of production to locales with lower union density in the US southern states, agricultural and manufacturing based rural regions struggled to maintain financial solvency, and prison hosting emerged as a potential catalyst for economic growth (King, 2003: 1). With an average of thirty-five jobs being created for every hundred inmates being housed, and with state prison populations increasing by an annual average of 8.1 per cent from 1985 to 1995, local officials began to consider prisons as an economic development tool (King, 2003: 1). Counties and towns bid over state investments in new jails, while municipalities bid over contracts to host federal prisons. In Texas, for example, the town of Abilene offered an incentive package of over \$4 million to the local government. The package included a 316-acre site for the prison as well as over 1,100 acres of farmland adjacent to the facility, capable of generating \$500,000 in cotton per year if cultivated by inmate workers (King, 2003: 1). The town officials also proposed to build roads into the facility, hoping to use the prison as an anchor investment to attract further commercial activity.

Local and state initiatives to host prisons are best understood as examples of what David Harvey has called ‘spatio-temporal fixes’—that is, as attempts to mediate the over-accumulation crisis of particular periods by bringing surplus capital and surplus labour power profitably together to accomplish socially useful tasks (Harvey, 2004: 1). As Harvey explains, it is possible to absorb labour power and capital surpluses by: (a) temporal displacement through investment in long-term capital projects of social expenditures; (b) spatial displacements through the opening-up of new markets and new production capacities, and of new resources, social and labour possibilities elsewhere; or (c) some combination of (a) and (b) (Harvey, 2004: 2).

Prison hosting plans combined (a) and (b) by embedding fixed capital in the built environment, and so created the necessary physical infrastructures for production and consumption to proceed over space and time. But the reallocation of capital and labour surpluses to construct prisons and infrastructure couldn’t be

achieved without the help of state institutions with the capacity to generate credit. As Harvey explains, ‘A quantity of “fictitious capital” is created that can be allocated away from current consumption to future-oriented projects in, say, highway construction or education, thereby re-invigorating the economy (including, perhaps, augmenting the demand for surplus commodities like shirts and shoes by teachers and construction workers)’; or, in the case of prisons, by correctional staff (Harvey, 2004: 2). These projects have generally been funded by state bonds.

Historically, investment in state bonds has been paid off via taxes; but extensive tax cuts in the 1980s required that the state locate an alternative form of return on its ‘fictitious capital’ in order to pay off the debt built into its physical and social infrastructure. Hence, while prison-building served as an end in itself by its absorption of surpluses, it was also a means to a productive—i.e. facilitative of capital accumulation—end. Prison-building projects combined non-inmate workers and private firms with inmate construction teams to cut costs, and once the projects were complete, prison industry programmes ensured future productivity to guarantee a return on state investment. It is not surprising, then, that a 1986 Department of Justice survey concluded:

Private sector involvement in prison-based businesses is an idea in good currency with key policy-makers at the state level. Survey results show that the concept of private sector involvement in prison-based businesses is endorsed by the overwhelming majority of governors, legislators, and directors of state correctional agencies, who favor public/private ventures because they expect that private sector participation will provide ongoing revenue for the state. (Department of Justice, 1986: 11)

At the federal level, too, the prison industries were expanding, though private firms did not become involved in federal prisons until the reform of Federal Prison Industries in the 1990s. A series of crime bills passed in the 1980s concretised the anti-poverty policy of mass incarceration and the resultant huge financial burden to the federal government. In light of the state’s struggle to balance the social expenses of the ‘crackdown on crime’ with conditions of fiscal crisis (the structural tendency for government spending to outrace revenues), the FPI emerged as a strategy for maintaining state-sector stability. Thus, the fourth tendency enabling carceral expansion was that prison industries emerged as

a strategy for lowering average social capital costs, and lowering the costs of social expenses.

As of 1983, federal inmates could be required to work forty hours a week, and while most of these jobs took the form of facility support (laundry, food, clerical work, maintenance and repairs), one in every sixteen federal inmates worked for FPI producing goods that were sold to government agencies or exported abroad (House of Representatives [H.R.] Report, 2003: 17). With FPI inmates generating nearly six times as much revenue as non-FPI inmates by 1994, the strategy seemed to be working. 'Using FPI's 1994 revenue as a base, each federal inmate generated \$4,177; FPI inmates each generated \$24,687. The revenue generated by FPI inmate-workers exceeded the fiscal year 1994 average costs of confinement (\$21,352) by \$3,335' (Dunkel, 1999: 283). Thus, unlike the profit-consuming rehabilitative programmes of 1930s–1970s prisons, Federal Prison Industries prides itself on being a 'self-supporting enterprise', and even managed to return \$80 million dollars to the US Treasury by 1998 (Parenti, 1999: 45–55).

The 1970s reintroduction of deskilled labour in federal facilities was justified by a simultaneous strategy of fiscal downloading; that is, the transferring of carceral costs onto prisoners and their families. Since the mid-1980s, correctional facilities have taken to billing prisoners for room and board, collecting 'processing fees' at intake, charging for meals, and imposing a 'co-payment' for access to the infirmary, as well as supplemental charges for various other amenities (Wacquant, 2002: 24). These shifts, together with the trend towards lower levels of services and living standards within penal establishments, and the doing away with various 'privileges' like educational programmes, sports and rehabilitative activities like job development and counselling, signified the end of the 'rehabilitative' model of imprisonment and the emergence of the 'medical model' (Funke et al., 1989: 5).¹

The shift away from the 'rehabilitative' model towards one in which prisoners were made responsible for the costs of their imprisonment reflected the larger ideological shift that enabled all of the above developments to occur. The disintegration of welfare services and the strategy of poverty-regulation through mass incarceration that characterised neoliberalism were accomplished, in part, through the ideological resurgence of the liberal doctrine of freedom, which asserts that in capitalism, poverty and unemployment are voluntary.

In his 1830 book, *Three Lectures on the Rate of Wages*, political economist Nassau Senior advised that the removal of all

restrictions on free commerce and accumulation of capital would improve the lives of workers and capitalists by raising productivity. Furthermore, he argued, productivity would also increase if the poor laws were abolished, since they decreased workers' incentives to work. Senior believed that the English poor laws, based on a system of family allowances for the unemployed and the destitute, created an arrogant attitude amongst workers that their families had a right to exist even if the workers themselves did not or could not find work. He contended that poor laws created an 'unnatural' relationship between capitalists and workers that would lead to 'unchecked anger, arrogance, and fanaticism of the poor, where profit and capital are all eaten up and pauperism produces its natural effects of famine, pestilence and civil war' (Senior, 1830).

In recent years, the intellectual descendants of Senior and his contemporaries, most notably Milton Friedman, have argued that all government intervention should be eliminated except for the enforcement of property rights and contract laws and the provision of national defence. Their popular claim that the state should cease to absorb social costs such as imprisonment, and that prisoners shouldn't be allowed to 'go on vacation' at the taxpayers' expense clearly echoes Senior's condemnation of the poor laws. And just as it did in Senior's time, the neoliberal resurgence of this doctrine has had the similar effect of punishing those who cannot find buyers for their labour power, or those who attempt to survive outside of state-sanctioned capitalist dynamics, since of those in prison, only two in ten are there for alleged violent crime. The rest are there for drug offences, property offences (usually theft), or public disorder (Parenti, 1999: 217, 239). And it is, after all, logical that, once the obligation to work has been imposed on the poor outside prisons through workfare, it should also be imposed on the poor inside prison.

In sum, the reinvigoration and expansion of the prison industries during the 1970s and 1980s was related to the ongoing transformation of US class and occupational structures. As the state managed the contradictions of neoliberal restructuring, prison expansion emerged as a legitimisation strategy, albeit a very expensive one. In the face of declining working-class power, the reinvigoration of the prison industries has been a state attempt to recover the associated costs of incarceration by downloading them onto individual prisoners and then appropriating their labour power to settle the bill. Exacerbated and enabled by general neoliberal trends at local, federal and international levels, the contradiction of state firms' competition with private capital

exerted pressure on the state to make the prisoners' labour power available to private firms as well, and this tendency intensified during the 1990s.

FPI reform in the 1990s and early twenty-first century

As carceral costs continued to rise throughout the 1990s and the contradiction of the state's competition with capital became more apparent, a policy debate raged over the remaining legal barriers to private sector firms' use of inmate work. Contrary to many accounts, however, this debate was not held between leftist activists and profit-hungry corporations, with the democratic state caught in the middle. Rather, the disintegration of the restrictions and limits to prison labour that were concretised in the 1990s through a series of legal reforms resulted from tensions and contradictions—and synergy—between and internal to US capital and the US state.

US court decisions since 1865 have upheld the principle that prisoners can be required to work, and that their labour belongs to the state and its contractors. These decisions have been legally grounded in the Thirteenth Amendment to the US Constitution, which abolished slavery and outlawed involuntary servitude except 'as a punishment for crime whereof the party shall have been duly convicted' (US Constitution, Amendment 13). Since the Industrial Revolution, US federal and municipal governments have upheld the right of private enterprises to utilise prison labour as a cost-saving strategy, except when government restrictions have been imposed as a result of working-class pressure. When the prison industry peaked during the nineteenth century as both a state and private-sector cost-cutting strategy, three-fourths of inmates worked, and two-thirds of those worked for private firms (Department of Justice, 1985: 11). As a US Department of Justice report describes it, 'As wardens attempted to make their institutions self-sufficient, even profit-making operations, prison work became *a source of free labour for industry*. The Industrial Revolution speeded this process and all over the nation, *inmates became involved in large-scale industries*' (Department of Justice, 1985: 11, my emphasis). Private-sector involvement was further increased during the opening years of the Great Depression, but these gains for capital were reversed in the post-war period in the climate of elevated working-class power. The 1990s have marked the most intense legal reform battle since that time, as limits to private-sector involvement in the prison industries have been all but entirely dissolved, except for protectionist policies to ensure the sustained revenue of FPI.

The first in the series of reforms came in 1998 following the publication of a widely publicised and much commented-upon report of the National Center for Policy Analysis, a ‘pro-free-enterprise’ think tank, entitled *Factories Behind Bars*. This report extolled the economic value and moral virtues of convict labour, and proposed as a national goal that one in four prisoners should be put to work, with 60 per cent of their pay allocated to compensate taxpayers for the cost of their incarceration. This way, they hoped to generate at least 10 per cent of the country’s operational costs for corrections. Lionising the ‘free-market’ conditions of the nineteenth century, the report urged the authorities to stop ‘wasting’ the ‘huge asset’ of convict labour and move to ‘make prisons hum with productive work’, by ‘repealing federal and state laws limiting the use of carceral workers and goods, curtailing inmate litigation against prison employment, financially rewarding wardens for making their facility economically self-sufficient and establishing flexible production and marketing programmes—in short, by running prisons as a business’ (Waquant, 2002: 27).

Less than a year later, the Bureau of Justice issued a new interpretation of the Prison Industry Enhancement Program (PIE), a federal initiative launched in 1979 to promote the industrial employment of convicts by commercial firms, and FPI expanded its offerings to include inmate services on the public market, though the sale of *goods* was still confined to sales to government agencies or for export abroad (H.R. Report, 2003: 12). Prior to the new interpretation of the PIE, FPI goods and services were both banned from commercial markets, and private-sector involvement was limited since legislation required that FPI products should have 80 per cent of their value added by inmates (H.R. Report, 2003: 17). The new interpretation, however, perfectly coinciding as it did with the service-sector boom, resulted in increased private-sector contracts for FPI, and all contractors were guaranteed a marketplace with federal government agencies under the FPI’s mandatory source status (H.R. Report, 2003: 16). Complementing this shift, that same year the federal court upheld a decision that minimum wage laws do not apply to inmates in municipal prison industries, even when they are working for private firms. The FPI used this ruling to justify its commercial services market initiative, which details the plans for private-sector integration, with ‘inmate wages remaining substantially lower than minimum wage, and up to 80% appropriated for victim retribution, family support or obligations, and living expenses’ (H.R. Report, 2003: 17).

While in the 1980s, prison labour had primarily been a municipal-level strategy to boost competitive-sector firms, the

enormous expansion of FPI in the 1990s undermined the competitiveness of that same sector. Unions and small businesses thus claimed that the new Prison Industry Enhancement Act interpretation gave the FPI unfair advantages over small firms and drove down the wage scale of the entire working class, since it allowed the FPI to circumvent legal restraints that had previously limited its commercial involvement. According to the subcommittee on oversight and investigations of the congressional committee on education and the workforce: 'Notable among the restrictions that could now be bypassed are the prohibition against displacement of non-inmate workers to provide jobs for inmate workers. Without the minimum wage set by the Fair Labour Standards Act, private sector firms using non-inmate workers face unfair competition from firms using inmate wages being paid inmate wages' (H.R. Report, 2003: 23).

At a congressional hearing on the matter, competitive-industry leaders raised strong objections to FPI expansion, claiming that small businesses should not have to deal with unfair competition from their own government, especially in light of increasing competition from sweatshops abroad (H.R. Report, 2003: 115).² These sentiments were echoed by municipal decision-makers who, in a climate of rising unemployment, attempted to deflect criticism away from neoliberal restructuring and onto FPI.³ During the congressional hearing, North Carolina Representative Howard Coble testified on behalf of the 6th Congressional District of North Carolina, home to more than 40,000 textile and furniture workers. He argued that since two major classes of items produced by FPI were textiles and furniture, small businesses within his district were 'deprived of employment opportunities in order to give work to federal inmates' (H.R. Report, 2003: 112).

Congressional Representative Steve King from Iowa made a similar statement, saying, 'As a small business owner, I know the challenges that small businesses face, and they must deal with a myriad of regulations and laws. However, FPI is not held to those standards. FPI pays its inmates between 23 cents and \$1.15 an hour, is exempt from OSHA [Health and Safety regulations] [and] taxes, and does not have to provide employee benefits. Private sector employees cannot compete with this!' (H.R. Report, 2003: 115). He summarised the sentiments of many competitive-sector firms when he argued, 'there is no excuse or justification for undermining small business with a government competitor' (H.R. Report, 2003: 115). The real threat to small businesses, undoubtedly, was the concentration and consolidation of capital that occurred during this time, but FPI certainly added to these tensions.

Union leaders exerted simultaneous pressure. Ann Hoffman testified on behalf of the Union of Needletrades, Industrial and Textile Employees (UNITE), which shared the view of the AFL-CIO and its affiliates that prisoners should never be used in competition with non-prison labour or to replace workers who are not in prison, a dynamic which is 'becoming more and more the norm' (Bureau of Prisons Oversight, 1999: 26).

Federal decision-makers and representatives of FPI responded to the pressures by noting the difficulty of forcing inmates to work.⁴ Decision-makers also quite straightforwardly argued that the expenses associated with the surging prison population necessitated FPI expansion, revealing the carceral cost-cutting strategy of making prisoners pay for themselves by appropriating their labour power (Bureau of Prisons Oversight, 1999: 27). Furthermore, they argued, these jobs were necessary in order to 'uphold' safe conditions in prisons in light of the lack of other incentives for good behaviour, since parole, good conduct credits, Pell Grants, vocational and educational programmes had all been abolished (Bureau of Prisons Oversight, 1999: 28).

Efforts by prisoners' rights groups, union leaders, state-level decision-makers and competitive-sector firms to persuade the executive office of the president to call for a legal review of the new interpretation were ignored, and the bill proposed to challenge the Commercial Services Market Initiative also failed (H.R. Report, 2003: 117). In spite of the municipal decision-makers' complaints that prison labour was contributing to unemployment and fiscal crisis in their jurisdictions, federal decision-makers seemingly agreed with the *Wall Street Journal* report published in the midst of the debate, which concluded, 'While more expensive private-sector workers may lose their jobs to prison labour, assigning work to the most cost-efficient producer is good for the economy' (Wright, 2001).

As FPI continued to expand through increasing monopoly-sector involvement at the federal level, the following companies (often through subsidiaries) moved production into prisons: AT&T Wireless, Boeing, Chevron, Compaq, Dell, Hewlett-Packard, Honda, Honeywell, IBM, Intel, Lucent Technologies, Macy's, Motorola, Microsoft, Nordstroms, Nortel, Northern Telecom, Pierre Cardin, Starbucks, Target Stores, Texas Instruments, Toys R Us, TWA, Revlon, and Victoria's Secret (Wright, 2001). As activists and academics raised public awareness about the prison industries, and in the face of international 'free trade' debates and corporate corruption scandals, some restrictions were placed on FPI by the Senate and Congress to sustain legitimation, though these did not establish less exploitative dynamics for prisoners or free workers.⁵

In addition to increasing monopoly-sector expansion at the federal level, the 1998 FPI expansion prompted a series of municipal-level initiatives to dissolve legal barriers and practical restrictions to private firms that wished to set up shop in state and local jails. Though by 1999 over forty municipalities had authorised private-sector involvement in prison industries, commercial participation remained relatively marginal in light of the legal and practical hurdles. But after a number of municipalities followed the FPI, relying on the new interpretation of the Prison Industry Enhancement Act emanating from the Department of Justice to begin to offer inmate-furnished services to the commercial market either directly or in partnership with private firms, commercial involvement began to increase (H.R. Report, 2003: 17). Oregon, for example, passed a 'get-tough-on-crime' bill allowing multiple factories to be built within each state carceral facility, and requiring inmates to work for private-sector firms for forty hours a week, if opportunities existed, with their 'pay' appropriated to be put toward the costs of imprisonment (Wright, 2003). The California Department of Corrections, which estimates that each inmate's carceral costs are \$21,470 per year, was the first to lease minimum-security inmate crews to private firms for offsite industrial work (Wacquant, 2002: 22).

These municipal initiatives revealed local government's need to curb corrections expenses, which by 1998 constituted between 10 and 15 per cent of public budgets. In sum, at the municipal level, as many municipal regions attempted to offset fiscal crisis the expansion of prison industries became a popular strategy for curbing carceral costs (Wacquant, 2002: 22), while the private sector increased its involvement as a cost-cutting strategy. At the municipal level, competitive-sector firms, facing increased competition from imports and the US government through FPI, were desperate to cut production costs. And as monopoly firms increasingly outsourced portions of production, inmate labour was seen as a cheaper and lower-hassle alternative to sweatshops abroad, with subcontractors mediating the exchange in order to avoid bad publicity. The only opposition to prison-industry expansion at the municipal level by the end of the 1990s came from prisoners' rights activists, who opposed inmate exploitation, and labour groups and laid-off workers, who opposed the replacement of free workers by inmates.

At the federal or national level, as the US state restructured to make all sectors, even carceral ones, more efficient, its historical responsibility for social services gave way to its need to create conditions for capital accumulation. This was revealed through a

series of prison-industry reforms at the federal level, some initiated by private firms and some by state decision-makers eager to raise efficiency, which ended FPI's monopoly on contracts with the federal government and opened these contracts to competition.

The restructuring of the US state under neoliberalism required the raising of efficiency in all sectors to better orient them towards accumulation. The synergy between capital and the state on this initiative can be understood as resulting from the federal government's need to maximise efficiency in the public sector in order to offset fiscal crisis. As O'Connor notes, 'Since World War II, but particularly since 1960, the federal government has been preoccupied with "efficiency" in purchases and programs' (O'Connor, 2002: 51). It is this need to increase public-sector efficiency that explains federal pushes for private-sector involvement with FPI, exemplified in the 2003 Competition in Contracting Bill which authorised FPI to sell products with only 60 per cent of their value added by inmates (H.R. Report, 2003: 53). In O'Connor's words, 'while such techniques do not go very far towards cutting fat from the state budget, they achieve stability in an indirect way by helping to raise productivity in the monopoly sector by creating new opportunities for profitable activity' (O'Connor, 2002: 51).

Today, in the face of the still limited private-sector involvement in FPI, the federal government is employing another strategy to raise state-sector efficiency: the privatisation of prison construction and management, one aspect of the 'the social-industrial complex' (O'Connor, 2002: 55). Since the early 1990s, the state has paid private prison corporations such as the Corrections Corporation of America (CCA)—dubbed the 'theme stock of the 90s' by the *New York Times*—a fee for each inmate housed within their walls (Gill, 2005: 28). The privatisation of federal, municipal, and local prisons and jails started picking up steam in the 1980s under an enthusiastic push from Reagan and Bush. It reached its peak under the Clinton administration, when the drive to reduce the federal workforce led to the Justice Department's contracting out the imprisonment of undocumented workers and minimum-security prisoners to private prison corporations. In 2004, there were eighteen private prison corporations guarding 100,000 prisoners in twenty-seven states. The two largest—the Corrections Corporation of America and Wackenhut—control about 75 per cent of the industry. From 1995 to 1998, CCA was among the five top performing stocks on the New York stock exchange. Founded in 1983, the value of the company's stock rose from \$50 million in 1986 (when it went public) to \$53.5 billion in 1997 (Parenti, 1999). According to Stephen Gill, 'The

major growth industry in the US over the past twenty years has not been in high-technology, or dot-com activities, but in private forms of crime control and the development of the so-called prison industrial complex, with private prisons the most vibrant sector' (Gill, 2005: 28). This has benefited monopoly capital since this sector reaps enormous benefits from the development of a large-scale, social-industrial complex. Social and related programmes geared to expanding productivity throughout the economy and financed in whole or in part by the state provide new investment opportunities for monopoly industries (O'Connor, 2002: 51).

The gains that capital and the federal government have accrued through prison privatisation and the 2003 Competition in Contracting Act, however, are nothing compared to the losses that have resulted for labour. Another result of the Contracting Act was that the FPI is now allowed to 'sell in the commercial market products which are currently imported from foreign countries and made with foreign labour', thus allowing even more opportunities for capital to replace free workers with prison workers (H.R. 2003: 138). And predictably, prison workers have been the ultimate losers since the Act shattered any hopes they might have had of being recognised under minimum-wage laws. The Act also allowed for 80 per cent of inmates' earnings to be appropriated in order to reduce government's carceral costs (King, 2003: 1).

In sum, the 1990s prison industries reform battle revealed the tensions between the federal government's long-term accumulation strategy and municipal states' attempts to recover carceral costs in the face of fiscal crisis, as well as their mutual tendency to reorganise non-productive or under-productive spheres so that they are functional to capital. It also makes explicit prison labour's paradox for competitive-sector firms, some of whom face competition from prison industries at a federal level, and some of whom rely on municipal-level prison industries to subsidise the costs of production. The reform debates also reveal the source of working-class tensions resulting from prison labour, as free workers are laid off in order that production can be moved into state prisons.

Though legal and practical restrictions continue to bear on penal employment at both municipal and federal levels, the expansion of the prison industry at municipal level seems likely as many municipalities attempt to manage fiscal crisis. Municipal-level prisons and local jails offer business advantages in comparison to federal facilities, since municipal-level legal restrictions are substantially lower and municipal facilities are generally located closer to commercial centres than are federal prisons (King, 2003: 1).

The prison industries are seen by municipalities as relieving idleness, fostering institutional adjustment and reducing discipline problems, and could potentially bring a 'long-term solution to the overcrowding crisis' that perennially plagues the US carceral system by increasing post-release success and thus cutting recidivism (Wacquant, 2002: 22). And most importantly, they download carceral costs onto individuals who have no means of paying them except through their appropriated labour.

Prison labour as accumulation by dispossession

Up to this point, this essay has attempted to come to a deeper understanding, first, of the actual historical processes and economic circumstances that led to the revitalisation of the prison industries during the 1970s and 1980s; and second, of the dynamics which led to increased private-sector involvement from the 1990s to the present.

I have argued that the neoliberal era has been characterised by the restructuring of the US state towards capital accumulation and that, as resources have been shifted away from social-service-oriented institutions towards departments tasked with managing accumulation (i.e. the Treasury), the US state has increasingly downloaded social costs onto individuals. The resurgence of prison work programmes has been one government strategy for cutting carceral costs by making prisoners pay for themselves, first by appropriating their labour power and then, once the contradiction of competing with private capital becomes clear, by making prisoners' labour power available to capital as well.

As carceral rates and costs continue to rise, prison industries have continued to expand. The most recent statistics indicate that forty-one out of fifty US states have statutes authorising the contracting-out of prison labour to private corporations, which run operations inside municipal prisons (Wright, 2006). Contract arrangements such as these, combined with 'prisoner-lease' arrangements wherein crews of minimum-security inmates work off-site for private firms, account for 10–15 per cent of inmate jobs in state-level prison industries (CNN, 2000).

Those inmates whose labour power is not deemed suitable for private firms work instead for the government in prison-facility support (laundry, catering, clerical work, maintenance and repair) (Carceral, 2006: 28). The rise in inmate employment has occurred primarily through FPI and public, municipal-level corporations rather than through private firms; but to point out that private-

sector use of prison labour remains relatively low when compared to the state's 'employment' of inmates is not to downplay the importance of this development.

As neoliberal trends continue to consolidate, and in the face of looming fiscal crisis, we can expect that US prisons and prisoners will enter even further into the dynamics of what David Harvey has called *accumulation by dispossession* (Harvey, 2003).

Borrowing from Karl Marx's notion of primitive accumulation and Hannah Arendt's arguments along similar lines, Harvey argues that a central dynamic of capitalism is the ongoing 'dispossession' of the many by the few. The neoliberal era has been characterised by this dynamic, which has played out through four trends: privatisation and commodification, financialisation, the management and manipulation of crisis, and state redistribution (Harvey, 2003: 149). As Harvey describes it:

The commodification of cultural forms, histories, and intellectual creativity entails wholesale dispossessions ... The corporatization and privatization of hitherto public assets, to say nothing of the wave of privatization that has swept the world, indicate a new wave of 'enclosing the commons.' As in the past, the power of the state is frequently used to force such processes through even against popular will. The reversion of common property rights won through years of hard class struggle to the private domain has been one of the most egregious of all policies of dispossession pursued in the name of neo-liberal orthodoxy. (Harvey, 2003: 149)

The prison industries under neoliberalism have constituted accumulation by dispossession, since prisoners are dispossessed by being forced to buy the services that were formerly free, and compelled to work in order to make these involuntary purchases. Generally lacking the means to pay for room and board fees and other newly imposed expenses, they compete with each other for the opportunity to have their labour appropriated by public and private firms while in jail, in order to avoid huge debt upon release.

This instance of dispossession occurs as soon as a person is sentenced to prison and made legally responsible for the associated costs. Formerly public assets, meaning that they were owned and funded by taxpayers through the state, prisons are now run as capitalist enterprises, and prison food, management services, infirmary items and the prison itself have all been turned into commodities. As Loïc Wacquant describes it,

Since the mid-eighties, some twenty states and dozens of urban counties have taken to billing their prisoners for room and board, collecting 'processing fees' at intake, charging for meals and imposing a 'co-payment' for access to the infirmary as well as supplemental charges for various amenities (uniforms, linens, laundry, electricity, etc.). Some prisons go so far as to haul their former customers to court to recover the debts that the latter contracted in spite of themselves by sojourning behind bars. (Wacquant, 2002: 24)

This is the case in Maccomb County in Detroit, Michigan, which boasts the 'first and most successful' jail reimbursement programme in the country.

The county bills inmates on a sliding scale from \$10 to \$56 per day, as well as \$15 for medical and dental visits and \$5 for drug prescriptions. If they do not cover their jail bills, the Reimbursement Unit will take them to court—it initiates over 600 lawsuits a year—or will pass the file to a collection agency out of a professed concern for fairness. As the programme's manager stated, 'We can't just say "you're poor, so I won't charge you." You have to treat everyone the same' (Wacquant, 2002: 24).

Prisoners, then, are made to purchase the services and amenities of their prisons, no matter how unsatisfactory they may be. That by the year 2000, the prison systems of more than forty states 'had been under court order for brutality, crowding, poor food or lack of medical care' indicates that they are unlikely to be satisfactory (Gill, 2005: 28).

There is reason to believe that, although there appear to be very few assets and services left subject to accumulation by dispossession, these dynamics will only intensify as carceral rates and associated costs continue to rise. The only good news is that since prison labour makes explicit many mystified neoliberal trends, and reveals that the globalisation of capital has been in many ways authored by the US state, new spaces are opened up for resistance.

As previously publicly owned assets are privatised and commodified, and as the state continues to download social costs onto individuals; as jobs are moved behind bars and prisoners work as captive labourers for public and private firms, while low-skilled workers struggle to find employment, new ground emerges on which the purportedly 'free' interaction of capital, labour and the state in the US market can be challenged.

Acknowledgements

Many thanks to Greg Albo, Michelle LeBaron, David McNally, Leo Panitch, Leah Vosko and Victoria Ingram for their helpful comments and feedback on earlier drafts of this paper. Thanks, too, to the two anonymous *Capital & Class* reviewers and to Alan G. Nasser, from whom I've learned everything.

Bibliography

- Albo, G. (2005) 'Neo-liberalism, Nafta, and the state of North American labour movements', *Just Labour*, vols. 6 & 7, Autumn.
- Bureau of Prisons Oversight (1999) 'The importance of the Federal Prison Industries'.
- Carceral, K. C. (2006) *Prison Inc.* (New York University Press).
- Davis, A. (2003) *Are Prisons Obsolete?* (Seven Stories Press).
- Dunkel, F. (1999) *Prison Labour: Salvation or Slavery?* (The Onanti International Institute for the Sociology of Law).
- Funke, G., N. Miller & B. Wayson (1989) *Assets and Liabilities of Correctional Industries* (Lexington Books).
- Gill, S. (2005) 'The contradictions of US supremacy', *Socialist Register*.
- Harvey, D. (2003) *The New Imperialism* (Oxford University Press).
- Harvey, D. (2004) 'The new imperialism: Accumulation by dispossession', *Socialist Register*.
- House of Representatives Report 108–348 (2003) 'Providing for consideration of H.R. 1829, Federal Prison Industries Competition in Contracting Act of 2003'.
- House of Representatives Report 103–39 (2003) 'The Federal Prison Industry's effects on the US economy and the small business environment'.
- King, R. (2003) 'Big prisons, small towns: Prison economics in rural America', *Sentencing Project Report* (Sentencing Project) February.
- McNally, D. (2002) *Another World is Possible: Globalization and Anti-Capitalism* (Arbiter Ring).
- Moody, K. (1997) *Workers in a Lean World: Unions in the International Economy* (Verso).
- National Center for Policy Analysis (1998) 'Factories behind bars'.
- National Institute of Justice (1986) 'Private sector involvement in prison-based businesses: A national assessment', February.
- National Institute of Justice (1988) 'Private sector involvement in prison-based businesses: A national assessment', September.
- O'Connor, J. (2002) *The Fiscal Crisis of the State* (Transaction).
- Panitch, L. & S. Gindin (2004) 'Global capitalism and American Empire', *Socialist Register*.

- Panitch, L. & S. Gindin (2005) 'Finance and American Empire', *Socialist Register*.
- Panitch, L. (2004) 'Globalization and the state' in L. Panitch et al. (eds.) *The Globalization Reader* (Merlin Press).
- Panitch, L. (1977) *The Canadian State: Political Economy and Political Power* (University of Toronto Press).
- Parenti, C. (1999) *Lockdown American: Police and Prisons in the Age of Crisis* (Verso).
- Sudbury, J. (2005) *Global Lockdown* (Routledge).
- Senior, N. (1830) *Three Lectures on the Rate of Wages*, online at the Marxists Internet Archive, <www.marxists.org> [accessed December 2006].
- Tomich, D. W. (2004) *Through the Prism of Slavery: Labour, Capital and World Economy* (Rowman & Littlefield).
- UNICOR, 'Doing business with the Federal Prison Industries: Small business overview', online at UNICOR website, FPI Contracting section, <www.unicor.gov>.
- US Bureau of Prisons Oversight (1999) 'The importance of Federal Prison Industries,' S. Hrg. 106-528, May 24.
- US Constitution, available online at Cornell University Law School website, <www.law.cornell.edu>, accessed March 2007.
- US Department of Justice and Federal Prison Industries, Inc. (2004) 'Annual report'.
- US Department of Justice, Office of Development, Testing and Dissemination (1985) 'The privatization of corrections', February.
- US General Accounting Office (1998) 'Federal Prison Industries: Delivery performance is improving, but problems remain'.
- US Senate Committee on Governmental Affairs (2004) 'Amending the federal procurement policy to establish a governmentwide policy requiring competition in certain executive agency procurements', Report 108-415.
- United States Senate Subcommittee on Workforce, Empowerment and Government Procedures (2003) 'Joint hearing on the FPI's effect on the US economy'.
- Virginia Department of Corrections, quoted in A. Davis (2003) *Are Prisons Obsolete?* (Seven Stories Press).
- Wacquant, L. (2002) 'Four strategies to curb carceral costs: On managing mass imprisonment in the United States', *Studies in Political Economy*, no. 69, Autumn.
- Wood, E. (2003) *Empire of Capital*, (Verso).
- Wright, P. (2001) 'Profiting from punishment', *Prison Legal News*, March.
- Wright, P. (2003) 'Corporate America goes to prison', *Prison Legal News*, March.

- 1 As a National Institute of Justice report concluded, in the early 1970s, changes in correctional philosophy and growing economic pressures rekindled interest in the prison industries. Disappointment with the so-called 'rehabilitative ideal' intensified interest in the more practical goal of supporting the offender's community adjustment. Also, rising prison populations and the costs of confinement coupled with increasing federal and fiscal restraint to revive interest in the economic potential of prison industries. As potential profit makers, they could reduce the cost of corrections. All these factors contributed to the resurgence of interest in prison industries in the 1970s and 1980s, this time with an increasingly private-sector tone (National Institute of Justice, 1988: 10).
- 2 The chairman of the hearing, Representative Sensenbrenner, summarised the sentiments of many business and labour leaders alike when he stated that, 'FPI enjoys a mandatory market for its goods, a facility to produce them and a large workforce that can be forced to manufacture them. They pay their workers far less than minimum wage, and they force their workers to work for the profit of FPI. The result is that FPI is able to drive tax-paying, law-abiding small businesses out of the market,' House of Representatives Report 108-348, 2003, p.115.
- 3 Senator Strom Thurmond, for example, said: 'Let me explain something about competition in prison. Imagine having employees who have little or no discipline, generally lack formal education, are difficult to control, and whose values are the opposite of yours and mine. This essentially is an inmate worker' (Bureau of Prisons Oversight, 1999: 27).
- 4 A 1999 reform bill required that the FPI board of directors, rather than being completely appointed by the US president, be made up of representatives from small business, labour, prisoners' interests and crime victims' families, as well three presidential appointees. Furthermore, the board was now required to make all decisions on the public record (H.R. Report, 2003: 53). Additionally, the FPI was required to 'diversify its products' so that its sales were distributed among its industries as broadly as possible, 'so as not to compete with private enterprise' (H.R. Report, 2003: 53).